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INDIAN PARTICIPATION IN GOVERNMENT PROCUREMENT CONTRACTING

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON INDIAN PARTICIPATION
IN GOVERNMENT PROCUREMENT CONTRACTING

APRIL 14, 1989
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INDIAN PARTICIPATION IN GOVERNMENT PROCUREMENT CONTRACTING

FRIDAY, APRIL 14, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Conrad, Murkowski, Cochran and Gorton.

Staff present: Alan Parker, Patricia Zell, Virginia Boylan, Eric Eberhard, Dan Lewis, Richard Bad Moccasin, Craig Obey, Bob Arnold, Kathleen Hooker, and Lynn Toledo.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will come to order.

We welcome all of you to the Select Committee on Indian Affairs. This morning we will hear your words on Indian participation in Government contracting.

We are very fortunate to have with us leading representatives of the Indian business world. I see in this gathering major defense contractors and important officials of the Department of Defense and the Small Business Administration.

As all of you are aware, in the last Congress this committee assigned a very high priority to Indian economic development issues. Most of us are convinced that the only way to overcome the conditions of deep-seated poverty that affect nearly every Indian community is to make an all out effort, using every resource available.

It might be well at this stage to review some of the statistics that have been presented to us. In Indian country, the unemployment picture exceeds 57 percent. That was a few months ago—it could be 60 percent today. Keep in mind that our national unemployment is at the lowest.

Consistent with the policy of this committee, we are looking to Indian country for their recommendations on the goals and strategies we should be pursuing in this very important area of economic development. For those of you who may not be aware of how we came to that policy, it was very simple.

We made a study of the policies of today and of the past And as we all know, policies are made in Washington. We found that all too often, solutions made in Washington for Indian country problems just did not work. The problems are unique, the circumstances are strange to many of the Washington bureaucrats, and that is why we are having a gathering of this nature.

As some of you are aware, I also serve as Chairman of the Defense Appropriations Subcommittee and my service on both committees convinces me that there is much room for improvement in our Government's effort to provide contracting opportunities for Indian businesses. You may ask at this point: why should we single out Indians? After all there are many other minority groups. There are the blacks, the Hispanics, the Asians, just to name a few.

I think that all of us should remind ourselves that there is a very special and important relationship that exists between this Government of ours and the people who reside in Indian Country. It is a relationship of trust which has been established by the Constitution and by the laws of this land.

It is very difficult for most Americans to realize that Indians are sovereign. Their lands are sovereign. They do have sovereign powers, not of this Government's making. That sovereignty was there with them long before we ever came here.

The Government of the United States has, by the Constitution and our laws, not only recognized this, but has also made every attempt to protect this sovereign character of the Indian people.

Before proceeding with the first witness, I would like to offer a few comments on the role of Indian tribes in organizing and sponsoring business enterprises. Privately owned enterprises are unique in the American world of business. In most cases business enterprises are owned by individuals or by shareholders who purchase stock, publicly or otherwise, and it is not the usual arrangement in this free enterprise society for governments to own and operate private business.

However in the case of Indian tribes, the elected officials are also responsible for the custody and management of tribally-owned resources, which on most reservations means all the land and capital generated by these assets. In addition, Federal law has for many years recognized the authority of an Indian tribe to incorporate businesses and such businesses are exempt from taxation.

Because the great majority of Indian reservations are poverty stricken—and that would be an understatement—there is no middle class such as we know in our society who can accumulate private wealth and can use that wealth to own and operate private business. Consequently the tribal organization is often the only entity with the ability to mobilize the resources necessary to establish a business enterprise.

This is the way of doing business that Indians are familiar with, and from all the indications I have received, this is the way that they prefer to do business. I believe it is incumbent upon those of us who are responsible members of the Government of the United States to respect these preferences.

I know that some of you will be testifying regarding the accommodations to the status of tribal enterprises which the Small Business Administration needs to be making in their regulations and procedures. I am certain that SBA recognizes the responsibility to implement legislation which recognizes the eligibility of tribal enterprises for contract preferences, and we look forward to working with all of you to accomplish the intent of the Congress in this matter.

We have 10 witnesses today, and if it is at all possible, I would like you all to sit at the table. I will then call upon each of you to present your thoughts, but after awhile, we can begin the process of interaction and discussion that I think will be helpful today.

Let me now call up our panel. The president of the National Center for American Indian Enterprise Development of California, Mr. Steve Stallings; the president of McDonnell Douglas Helicopter of Mesa, AZ, Mr. William P. Brown; Mr. Dan Press, Heron, Burchette, Ruckert and Rothwell of Washington, DC; Mr. Ray Goetting, chairman of the board of directors of Laguna Industries of Laguna, NM; the manager of the Washington Office of Raytheon Service Company in Virginia, Mr. Robert Perry; the director of the Supplier Relations and Socio-Economic Business Programs of Northrop, Mr. Jay Cooper; the chief of the Mississippi Band of Choctaw Indians in Mississippi, the Hon. Phillip Martin; Mr. Horace J. Crouch, representing Mr. Robert B. Costello, the Under Secretary of Defense for Acquisition of the Department of Defense; the Deputy Associate Administrator for Minority Small Business and Capital Ownership Development of SBA, Ms. Johnnie L. Albertson. Finally, we have the chairman of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, the Hon. Edward Lone Fight.

I hope that at the end of the hearing we can be all smiling and working together. If we can accomplish this in a few hours, we have done our day's work. Let me assure each of you that we have received your prepared statements and all of them will be made part of the record in total.

May I call on the first witness on our agenda, Mr. Stallings.

STATEMENT OF STEVEN STALLINGS, PRESIDENT, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT, EL MONTE, CA

Mr. STALLINGS. Thank you, Senator Inouye.

The National Center is a national not-for-profit management consulting firm organized in 1969 to assist tribes of American Indians to achieve self-sufficiency through business and economic development. We have acquired over $150 million in financing and Federal procurement opportunities in the form of contracts for Indians while starting up 388 new businesses and creating over 2,800 new jobs.

Each year we conduct the Reservation Economic Summit on Enterprise Development, and one of the major topics of this conference has been Federal procurement. The National Center advocates for Indian economic interests by improving the information and resources available to American Indians in these fields, by enhancing the impact of procurement laws on Indian business development, by expanding the resources beneficial to tribally and individually owned businesses, and by helping to shape public education policies relative to Indian business and economic development.

In our 1989 summit one of the major concerns was the area of manufacturing among 10 other priority industries. We think the area of manufacturing is critical, given that only two percent of the 15,000 companies owned by American Indians are classified as manufacturing. A capital and labor intensive industry, manufacturing provides the greatest potential for creating long-term economic self-sufficiency for American Indians.

You may have read in the "Wall Street Journal" recently, where it was reported that the United States is entering a period of labor shortage. Our labor supply is not depleted. Rural areas and Indian reservations have high unemployment, and Indian reservations are an excellent domestic opportunity to reduce and level manufacturing costs for American industry.

While American industry absorbs the extra cost of hunting harder and paying more for entry level positions, they are experiencing high turnover and lower productivity. If this situation worsens, the tightening labor supply will hurt our trade balance more and more as companies go beyond our borders for production work.

American Indian tribes and businesses are prepared and ready to serve as America's next source of economic revitalization contributing to the U.S. economy while solving the economic deprivation of our original inhabitants. A number of recent legislative developments have created a window of opportunity for Indians to participate in the nearly $6 billion that the U.S. Government will purchase from minority businesses next year.

These opportunities include Public Law 100-442, the Indian Finance Act, Public Law 99-661, the Small Business Administration's 8(a) Program, and future amendment of the Buy-Indian Act that this committee is currently working on.

Given a consistent public policy, perhaps even enabling legislation, numerous Government contracts can be awarded to new and existing Indian enterprises which can significantly impact American Indians as well as America. But that is going to take an approach different from the "business as usual" approach.

These three major legislative developments are the result of the fine work of this committee, its staff, and your constituents during proceedings in the 100th Congress. However, much more remains to be done in the area of Federal procurement that these three pieces of legislation begin to address.

We are recommending a comprehensive policy initiative on Federal procurement as it relates to American Indians. In our written testimony we examine each of these initiatives and related Federal procurement policies for your review.

First of all, the Indian Finance Act. As you know, the amendments passed last year. Section 504 adds a 5-percent incentive payment.

Unfortunately, the agency which can provide the greatest contribution to this effort, the Department of Defense, has no plans to implement the special provision. In my written testimony is a letter from the Department of Defense to that effect.

We have specific recommendations on Section 504 of the Indian Finance Act and Public Law 99-661. Those recommendations include: an annual examination of DoD's record of prime contracting separately with American Indian tribal enterprises and Indian-owned businesses to be conducted by this committee; in your capacity as Chairman of the Defense Appropriations Committee, Mr. Chairman; a review of the defense industry awards to both classifications as listed in my statement; investigation of the history and precedence of the 10-percent incentive payment under Public Law 99-661 that instructs DoD to establish a similar process for awarding the 5-percent incentive payments when an industry reaches their 5 percent goal under Public Law 99-661; development of an appropriations line item within the Indian Finance Act of approximately $5 million to act as the source of payment for these incentives; conducting annual reviews of the performance of Federal agencies on these provisions; and expanding procurement technical assistance through establishment of a national procurement assistance project under the Defense Logistics Agency.

As to the Small Business Administration's 8(a) Program, the Minority Small Business and Capital Ownership Development Program, Public Law 100-656, a specific set of proposed rules now apply to concerns owned by Indian tribes. However, SBA must improve its record of recruiting and certifying tribal enterprises for the 8(a) Program.

SBA must be required to report to Congress on its progress for Indian participation in the program. Additionally, the 8(a) Program is a lengthy and difficult process that requires extensive business planning and financial forecasting. Technical assistance is not readily available to tribes to get through the maze of this application process.

Our recommendation is that the BIA should be the only source of IBE certification. Currently, IBE certification at SBA is a self-identification process. SBA should seek certification of IBEs prior to 8(a) determination for Indians.

In the application process, financial information should be limited to the business' board of directors and the business' assets. Currently, under the pending regulations, waiver of sovereign immunity is required. We recommend this only apply to the business assets and not other assets of the tribe.

We recommend eligibility of joint ventures at the application stage, we would recommend that these be allowed and require divestiture agreements as the basis for maintaining minority and Indian ownership. Tribes should only be required to maintain management control, rather than management responsibility to allow for adequate training periods for tribal members who will eventually become CEOs later.

SBA should use alternative organization methods such as JVs at the time of application to ensure independence and continuity of management and political leadership while increasing Indian procurement. Due to the limited talent pool, SBA should allow for participation of elected officials on the board of 8(a) concerns. The current regulations do not consider the limited talent pool among Indians, and the participation of qualified tribal officials in Indian enterprises.

Specifically on the Special Memorandum of Understanding between SBA and DoD, we recommend that the progress cited by DoD in completion of this memorandum should be reviewed. SBA and DoD must be required to seek and obtain an increasing amount of DoD contracts for Indian enterprises. DoD must implement a procurement process to target specific contracts to Indians and identify products of potential set-aside and development by tribal enterprises.

I am not going to cover the specific recommendations under the Buy-Indian Act because I have submitted those previously to you in writing, but I would like to say that there are 15,000 Indian firms nationwide which employ over 20,000 American Indians. They have sales of about $646 million, and each is clearly contributing to the American economy and conducting their affairs in an ethical and businesslike manner.

While the recent report of 19 "front" cases is serious, it does not represent an alarming statistic if you look at the total number of companies. "Fronts" are initiated by fraudulent individuals and entities that must be dealt with by civil and criminal penalties for claiming to be an American Indian company. "Fronts" are perpetuated by an inadequate procurement process or system of certification and lack of enforcement in preference policies.

The Select Committee on Indian Affairs has an excellent opportunity to correct present preference law problems and to ensure future compliance and further enhance Federal procurement policies for American Indians through proper amendment of the Buy-Indian Act. It will be critical to first adopt a clear definition of what an Indian company is, and in our statement we provide a recommendation for that.

An efficient certification process would verify American Indian ownership and management control of the firms in all Government vendor files. It would establish a single point of contact for agencies within the Government for certification. It would initiate sanctions including civil and criminal penalties aimed at individuals and firms who falsely certify themselves as American Indian owned and would include a termination clause in all future contracts for falsification of IBE status or IBE subcontractor status.

My testimony goes on to provide you with a long list of recommendations on the Buy-Indian Act. The National Center appreciates the opportunity to speak before you today, and believes that working together, we can strengthen American Indian business and economic development.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Stallings appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Stallings.

Before we proceed further, I would like to recognize the presence of a very important member of this committee, Senator Cochran of Mississippi. As we all know, the Mississippi Band of Choctaw Indians is one of the real success stories that we have.

I know that the Choctaw are very industrious folks, but they will be the first to say that it takes more than themselves to operate the business. I think some credit must be given to the constituents of the State of Mississippi.

Senator COCHRAN. Mr. Chairman, thank you very much for your kind observations. It is a pleasure to be here this morning to hear these witnesses talk about how we can improve the opportunities for doing business with the Federal Government. After all, I think the Federal Government is the largest purchaser of goods and services in the world.

This is a wonderful opportunity for us to make sure that Native Americans and those on tribal lands have an opportunity to participate in the Federal procurement process. That is what this hearing is about, and I commend you for calling it today.

I appreciate very much your including Chief Phillip Martin, who is head of our Mississippi Band of Choctaw Indians in this panel.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Before we proceed, I would like to share one little thought. I find in my 35 years of legislative experience that there are two types of people: one who insists upon the inflexible, so-called highly principled relationship of confrontation, and then the other, who is more flexible and is willing to accommodate, one who shows some sensitivity to the unique problems of the other party.

I prefer the latter, and I find that they are the ones who succeed. If you want to be righteous about everything, insist upon crossing the "T's" and dotting the "I's", both parties can play that game and you usually end up with nothing.

What I am trying to suggest is that in this business I know that if you want to help, you can do that with the same set of laws. If you want to frustrate the party, you can also do that with the same set of laws. I am just hoping that we can take that extra effort to be helpful.

I find that all too often we have had instances of confrontational relationships between our Government and the government in Indian country. If we can bring about a bit more accommodation, I am certain we can succeed. A little leaning over backward is all we ask for.

May I now call upon the president of McDonnell Douglas Helicopter of Mesa, AZ, Mr. Brown?

STATEMENT OF WILLIAM P. BROWN, PRESIDENT, McDONNELL DOUGLAS HELICOPTER, MESA, AZ

Mr. BROWN. Mr. Chairman, Members of the Committee, I am pleased to be here this morning to tell you about our activities with the White Mountain Apache Indians of eastern Arizona. They are a people with special hopes and dreams and they have the desire and the ability to fashion their dreams into reality.

They are the great warrior Apaches feared and respected for their cleverness, tactics, and endurance in the last century. They are also the peace-loving Apaches whose forbearers were awarded Congressional Medals of Honor for scouting the U.S. frontier cavalry to victory in the wild West. They always volunteer first to serve our Nation in every great conflict.

They are friends of ours. They are co-workers on the large and important AH-64 Apache Attack Helicopter Program. They are also a people in transition.

The traditions of the Apache Indians and Army's Apache Helicopter are blended in the experience that I am about to relate.

McDonnell Douglas Helicopter Company is the prime contractor for the AH-64 Apache Helicopter. We have delivered 450 of the planned 975 Apaches to the U.S. Army and the National Guard. We also expect to sell another 500 Apaches to allied nations around the world. Components crafted on the reservation by our White Mountain Apache brothers and sisters will be found in many of these helicopters based in the United States and in Germany on the frontiers of freedom.

During the past year, McDonnell Douglas has enjoyed a highly satisfactory business alliance with the White Mountain Apache Nation. It all began in 1987 with a get-acquainted chat between a tribal representative and one of my staff about White Mountain Apache Chairman Reno Johnson's vision for the future. The vision is this: To provide opportunities so people can earn their own way to a better life on the reservation while preserving their rich traditions for generations to come.

It seemed natural that the company building the Apache Helicopter should be part of the future of the Apache people. So we began to explore how we might work together toward that vision of a better life.

At the same time, we had two important company objectives in mind: To identify a potentially outstanding new supplier and to make progress toward achieving the U.S. Government goal to award at least 5 percent of our defense-related subcontract work to small and disadvantaged businesses.

After extensive research, McDonnell Douglas concluded that the tribe was technically and financially capable of performing as a subcontractor. We then set out to identify work that could be done with only a modest tribal investment in facilities, tooling and training. This work was designed to capitalize on the tribe's craftsmanship and dedication at low risk.

We proposed that they manufacture cockpit thermal insulation blankets for Apache Helicopters and wooden pallets and shipping containers for other company products. Thirty-two thermal blankets of different shapes and sizes go into each Apache Helicopter. They are tucked into cockpit walls to ensure that pilots and aircraft avionics function in a comfortable environment.

Initially we offered the tribe a 1-year contract to produce thermal blankets for 86 helicopters. Value of this work is one-quarter of a million dollars. We also calculated that pallets and crates to meet our requirements could result in more than $100,000 of additional work for the tribe's newly formed Apache Manufacturing Company.

However, success of the tribe's first-ever manufacturing effort was never guaranteed. Even a billion-dollar company like ours cannot ensure the success of someone else's enterprise. But we committed to do all we could to optimize the tribe's chances for success.

We visited an abandoned bowling alley on Main Street in the capital city of Whiteriver and we felt it could house the work. Our people who are responsible for procurement, manufacturing, facilities, training, and quality met with tribal leaders and their representatives responsible for economic development, job training, and construction. Both delegations were enthusiastic and vowed to make it work.

The National Center for American Indian Enterprise Development—formerly UIDA—played an important supporting role. The Tribal Council voted unanimously to take on the challenge and to establish the Apache Manufacturing Company or AMCO for short.

The council earmarked $50,000 to renovate the former bowling alley to a manufacturing configuration and for equipment acquisition. McDonnell Douglas agreed to invest by providing advanced payments, kit materials for making the first blankets, toolings, which were primarily a type of templates, extensive training, and a quality control system that would meet all military specifications.

McDonnell Douglas provided each of the first 9 AMCO employees with 120 hours of training at our plant and also at Whiteriver. Indian workers took courses designed to help them make products that meet stringent military inspection criteria. They also learned about precision layout, cutting, marking, sewing, blueprint reading, safety and quality control.

AMCO's managers were given training in bid preparation, price analysis and marketing. Then, with all the groundwork carefully laid, the new enterprise was publicly launched in August 1988. Hundreds of tribal members, McDonnell Douglas employees, and VIPs gathered in the newly renovated manufacturing plant to celebrate the grand opening of the Apache Manufacturing Company at which Senator DeConcini gave the primary address.

Today AMCO is delivering products which far exceed our initial expectations. Our White Mountain Apache friends are helping set the stage for AMCO's growth by doing a superb job for McDonnell Douglas, for the U.S. Army, and for the American taxpayer.

Our Apache workers are enthusiastic, technically sharp, committed to quality, and take tremendous pride in their work. They have completed cockpit insulation for over 40 Apache Helicopters. That is about half of the first year's work. A second contract for equipping 52 more aircraft is in the offing. AMCO also is manufacturing fabric covers for aircraft pitot tubes. In March, just last month, they launched production of 250 wooden pallets for use in our warehouse, and crates for shipping 25mm automatic cannons for installation on the Army's Bradley Fighting Vehicle and Navy ships.

All of the products are of the highest quality. Their prices are reasonable, and deliveries are on-time or ahead of schedule.

AMCO has grown since production began in August. Employment has increased from the original 9 workers to 15. I might also add that AMCO hired a marketing manager a few months ago. She is getting a few tips from McDonnell Douglas Small Business Administrator Becky Oredsen, who is with me today. We are very proud of Becky, who also chairs the United Indian Development Association's Industry Advisory Counsel in the State of Arizona.

AMCOs early success has brought the tribe closer to realizing Chairman Johnson's vision for a better tomorrow for the White Mountain Apache Nation. But the benefits to our company are also significant. We have thousands of suppliers but there are very few with AMCO's dedication to customer service. The quality of their products demonstrates tremendous pride and workmanship, deep gratitude for the opportunity to work meaningfully, and dedication to continuing this important employment base on the reservation.

All in all, AMCO has proven to be a model supplier. This has led us to actively seek expansion of business with minority-owned firms, especially those located on the reservations.

We at the McDonnell Douglas Helicopter Company will continue to be available for guidance. However, our role as a major participant in this success story will diminish as AMCO grows larger and stronger. In fact, AMCO's most important objective from here on out is to strive for independence. And if Apache Helicopters are ever called upon to fight in anger, credit for their victories will belong in part to our Apache friends in Arizona.

We are very proud of our productive fellowship with Native Americans. We felt especially honored recently to receive The National Center for American Indian Enterprise Development's 1989 Corporate Citizen Award which is given in recognition of an outstanding private contribution to American Indian economic progress and for development of business opportunities for American Indians. I would like to add that Senator McCain received a similar legislative award at that same time.

I want to thank the committee for the opportunity to talk about a subject so important to McDonnell Douglas and Native American peoples throughout our land. If there are any questions, I would be delighted to answer.

[Prepared statement of Mr. Brown appears in appendix.]

The Chairman. Thank you very much, Mr. Brown.

In preparing for this hearing I specifically requested that McDonnell Douglas be part of the agenda because I wanted, for the record and for the people assembled, testimony setting forth a success story, to suggest to one and all that history need not be all negative. Working together, the relationship can be positive, as you have demonstrated.

I wish to publicly commend you for the commitment you have shown and the confidence you have demonstrated in the Apaches. I think they in turn have demonstrated that your faith has not gone undeserved. I think it has worked well all around.

As a footnote, you may be interested to know that 4 weeks ago, together with a few Members of the Defense Appropriations Subcommittee, I visited a few NATO countries and spent some time at the Fulda Gap on the border of East Germany. There, some of the products that you have manufactured in Arizona were working very well.

Mr. Brown. That's good. We are very proud of that product, Senator.

The Chairman. I can tell you that as chairman of the committee, your involvement with the Indians is duly noted and remembered.

Mr. Brown. Thank you, sir.

The Chairman. Before proceeding I am especially pleased to note the presence of a very senior member of this committee, Senator Murkowski of Alaska. Senator Murkowski decided that he would delay his return to Alaska to look after the concerns of his constituents so he can, at least by his presence here, indicate his interest in economic development.

As all of us know, the State of Alaska is undergoing the most traumatic and terrible disaster that any State has experienced in this century. I wish to personally commend and thank Senator Murkowski for coming here to show his interest. I am certain that the Alaskan people will understand this.

Senator MURKOWSKI. I thank you very much for your remarks, Mr. Chairman. You are quite correct in your assessment. It is a devastating disaster. Nevertheless, we all know that life must go on. Obviously we are going to learn something from this that we can share with all areas of the country that depend on marine transportation for the movement of petroleum products and oil.

The Senator from Hawaii is aware because he also has exposure in his own State.

The CHAIRMAN. Not as bad. [Laughter.]

Senator MURKOWSKI. They have experienced accidents as well, but the reality that approximately 55 percent of our crude oil moves by vessel, either on rivers, across bays, or across oceans is a reality that we live with and we must learn to contain in a manner more acceptable and responsive. Nevertheless, the Chairman is also aware of my deep commitment toward resource development, and the purpose of this hearing is obviously that, to encourage the private sector to work with the American Indian reservations as well as non-reservation natives, such as in my State, to try to further self-reliance.

It is good business to do business with residents wherever they may be, and the opportunities on America's Indian reservations and with America's Indian community are just that. There are problems and there are opportunities. There are risks and there are rewards, but I think the ingenuity of the American business sector in being up to those challenges speaks for itself, because obviously the rewards are there. There is a very productive labor force that is available, and it is a matter of working with that labor force in a manner in which you can have a profitable relationship.

Mr. Chairman, in conclusion I would like to introduce Mr. Bob Arnold. This is his first hearing with us, I believe. Bob is our professional staff member, and he comes from Alaska with a long association with Alaska's Native American community, including Eskimo, Aleut, and Indian. He is a former member of the Federal Field Committee which was formed to address the aftermath of our earthquake 25 years ago.

Coincidentally Mr. Chairman, while Alaskans are not superstitious, we do have reason to be. It was 25 years ago on Good Friday that we had that disastrous earthquake. Now 25 years later on Good Friday, the tanker went aground.

The CHAIRMAN. So 25 years from now on Good Friday, let's stay away. [Laughter.]

Senator MURKOWSKI. I am going to oversleep or stay in bed or something. [Laughter.]

Bob was among those who had the responsibility of formulating the recovery after the earthquake, and there was a large segment of the population that figured the best way to recover is pack your bag and leave. Those earthquakes were occurring momentarily afterward, and it does get your attention. So the Federal Field Committee was formed by Presidential action and it was an expedited effort to reconstruct Alaska's economy. They did a good job.

Bob worked with the State in various capacities, and I am very pleased that we have his expertise in Washington, Mr. Chairman. He will be a great addition to the professional staff, and I commend you for signing off on the bottom line, because after all, you sign the checks. [Laughter.]

The CHAIRMAN. I have had the pleasure of greeting Mr. Arnold, and as chairman of the committee I would like to publicly welcome him here and to say that we look forward to using his expertise in the days to come.

We also have a young lady from Mississippi. She has already made her mark on this committee's staff and we are looking forward to her expertise also.

Ms. Hooker, welcome.

Ms. HOOKER. Thank you, Mr. Chairman.

The CHAIRMAN. Before we proceed I want you to know that, yes, the State of Hawaii has had a couple of oil spills, but none of that oil has reached the beaches.

Senator COCHRAN. Of Waikiki. [Laughter.]

The CHAIRMAN. Waikiki is still in good shape.

Getting back to our serious business, we will now call on Mr. Press.

STATEMENT OF DAN PRESS, HERON, BURCHETTE, RUCKERT AND ROTHWELL, WASHINGTON, DC

Mr. PRESS. Thank you, Mr. Chairman.

My name is Dan Press and I am a partner with the law firm of Heron, Burchette, Ruckert and Rothwell located here in Washington but with offices throughout the West as well.

This is a special opportunity for us, Mr. Chairman, for two reasons. First of all, it is a chance to measure progress which we often do not get to do.

One year ago two of my clients testified before this committee in the same room, the Council for Tribal Employment Rights and Laguna Industries. They emphasized to the committee the need for legislation that would allow tribes to benefit from the minority set-aside programs, but also to tap into the expertise that exists in the large defense contractors and allow those defense contractors to share in the profits of the enterprise.

Six months later, thanks to the aggressive leadership of this committee, Congress passed legislation doing just that. The 8(a) Reform Act permits tribes and large defense contractors to enter into 8(a) joint ventures where the large defense contractor may own 49 percent of the joint venture and thereby share in the equity, therefore having a hard bottom line incentive to work with tribes and help tribes set up success stories like White Mountain and Laguna.

We would like to thank the committee for advocating that legislation on behalf of the Indian community. It is a radical change in the 8(a) mission. The focus of 8(a) has always been on individuals, but what Congress has now told the SBA is that one of the primary tools for Indian economic development is the 8(a) Program and that SBA is going to have to shift gears to some degree.

The other reason it is a special opportunity, Mr. Chairman, is because as you said at the beginning, it is an indication of your willingness to break new ground away from the rigid format of so many hearings where we sit here and talk to you and then leave so someone else can come up and talk to you. I often thought those were not really productive.

The opportunity you have offered to talk to other members of the panel as well as to the committee is a terrific one. I would like to take advantage of that because the steps that now face the community, the Congressional, the Federal, the Defense Contractor community, is to make that legislation work.

That involves the participants I just named, the Committee, the Congress, the defense contractors, the tribes, the Small Business Administration and the Defense Department. We are all sitting around this room today, and this is an opportunity to begin the dialogue that needs to occur.

As far as the tribes and the defense contractors go, I think they have been moving very aggressively, thanks to the committee, to begin using this new vehicle that has been made available. You spoke yesterday, Mr. Chairman, about the visits you get from defense contractors and the need for data to provide them. As a result of this legislation, the existing successful tribal companies have set up a new organization called the Native American Industrial Association, which is going to be a joint marketing operation.

The first thing they are going to do is prepare a booklet that will list in three or four pages for each company the capability that now exists in Indian country. We will make sure that you have boxes of those available in your office to hand out to your visitors.

We also think the effort you are making through hearings like this to indicate to the large defense contractors that the Congress appreciates what they are doing is very helpful in getting the large defense contractors to focus on this new legislation. So we think we are moving ahead very successfully with the tribes and the defense contractors, and I would like to focus my testimony primarily on SBA and DoD because they are the other two actors that need to be full participants.

As I indicated, the new legislation tells SBA, "We are counting on you to be the primary vehicle for Indian economic development and getting Indians into defense contracting." I think it would be fair to say that the relationship that has existed in the past between Indian tribes and SBA has not been a very successful one and has not been a particularly smooth one.

The Indian tribes feel resistance from SBA, and to some degree that is understandable because Indian tribes are so different from any other entity that comes before them. SBA is used to working with individuals, profit making organizations—these are governments, with different legal structures, but there has been resistance and we need to overcome that resistance if this 8(a) Program is going to work and if Congress is going to achieve these goals.

I would like to throw out three recommendations to SBA and to the committee on that point. One is that I would urge the committee and the new leadership in SBA to have a meeting and sit down so that the committee can explain to SBA its goals under this new legislation, what it sees happening in Indian economic development, and for SBA then to explain its situation and perhaps lay out the assistance it may need from the Congress and from this committee to achieve the new responsibility Congress has given them. We would hope that meeting would take place as soon as the new administrator is sworn in.

The second point is that the Reform Act instructs SBA to develop Indian capability in the form of an Indian desk or something comparable in every SBA office that is out in Indian country. We would urge you to fill those positions quickly with capable people because right now one of the biggest problems SBA has is not knowing much about Indians and about Indian legal issues. It is therefore difficult to respond quickly and effectively.

We urge you to fill those positions with people that the Indian tribes could go to and find someone who is knowledgeable about their situation so that their 8(a) applications and their other 8(a) dealings would be dealt with much more rapidly and effectively.

Last, I urge SBA to develop some formal linkages to the Indian community. You have those linkages with the black community; you have them with the Chicano community; you have not had that with the Indian community. It needs to be done. This committee can provide the leadership, but the long-term involves the Indian community and the SBA working together and talking constantly to overcome whatever problems may arise.

I urge you to reach out the same way the Indian community will reach out to meet you halfway, and in the words of the Chairman, let's both lean over backwards and become good working partners in this effort.

In regard to DoD, I would like to recommend three changes, also. This may again require the help of the committee.

One is the 5-percent goal and the incentive that Congress has attached to it, which has gotten the attention of the defense industry and to some degree, may be dominating their attention right now. The 8(a) joint venture opportunity is an attractive one, but right now people seem to be looking at the 5-percent goal.

I would encourage the Defense Appropriations Committee or the Armed Services Committee in conjunction with DoD and SBA to consider legislation that would give defense contractors credit toward the five percent goal for the joint ventures. It is not a subcontractor relationship but it achieves the same purpose. I think that will help the defense contractors find a further reason to work with the tribes.

Second, there is a problem finding a product. One of the most difficult problems for tribes that want to become defense contractors is figuring out what to make. DoD buys hundreds of thousands of items and it is too vast a universe for anybody that is not knowledgeable to carve out. And DoD has not been particularly helpful to tribes that have come in.

On one level, I can understand the frustration because a tribe comes in and says, "We've got an empty building and 80 percent unemployment rate. Help us find a product." It does not help very much. But I would urge the DoD and the Congress to work out an arrangement where if a tribe does come in, preferably in a joint venture relationship or on its own and says, "We have done our homework. Here are some parameters; here are our skills; here is our location; here is the kind of technical and management systems we have available." If they narrow down their universe and DoD circulates that information throughout the system and comes back and says, "Here are ten items that DoD purchases in large quantities." That can therefore be the foundation for a defense contracting industry on the reservation which meets the skill levels and the other parameters the tribes have.

If you can help us find products, I think you will overcome 50 or even 80 percent of the problems that tribes have faced trying to get started in defense contracting. I would urge the Defense Appropriations Committee and Armed Services Committee to take that step through DoD acquisition offices.

The third step involves subcontracting. Something that the Air Force has done with the Latin American Manufacturers Association seems to be working very successfully, and I would like to see it considered for work with Indian tribes.

On the subcontracting level you have the same problem, how to narrow down the universe. What the Air Force and LAMA have done is to pick one large procurement, the C-17 aircraft. The Air Force let a contract to LAMA to help find minority subcontractors just for that one product.

It narrows down the universe, and LAMA goes out and says, "We now have a list, a manageably sized list of subcontracts that are needed." That has worked very well.

Perhaps if you can pick out another large procurement and contract with an Indian organization like the National Center, it would be very helpful for overcoming the product identification problem.

I think that with those kinds of steps and the attitudes that the committee has been encouraging among the four participants, I think this new legislation can be a very effective tool.

I would like to make one last point on a subject matter that the Chairman and the Senator from Alaska raised, which is environmental issues. We are talking today about defense contracting, and I think it is a good area, but if you read the papers, one of the largest areas of growth in this country in the coming years is going to be environmental activities. I would like to encourage the committee to have a similar hearing at some time in the future to see what can be done to help Indian tribes become prime actors in the economic development side of the environment. I think it would be a beautiful concept for Indians to be leaders in helping to clean up America.

I would be glad to answer any questions, and we really do appreciate this opportunity today. Thank you.

[Prepared statement of Mr. Press appears in appendix.]

The CHAIRMAN. Mr. Press, it is always good to hear a witness suggest that our efforts have borne fruit so soon. We are trying our best to do this.

As to your suggestion that we get together with DoD, I am pleased to advise you that I have already been in contact with Secretary Costello and I can assure you that our relationship is not just correct, but I can tell you that it is very friendly. I like the Secretary's approach because he says that it is not necessary to make any more drastic changes to our laws, within the confines and the context of the laws. It is a matter of personalities. And he has assured me that he is going to do everything possible within the law to lean over backwards to help.

He has assigned his most important associate, Mr. Crouch, to be here with us today.

I welcome you, Mr. Crouch. As you know, I have discussed these matters with Secretary Costello and we are looking forward to having a long relationship of working together to help the Indians.

Your recommendations are very practical, Mr. Press, and I will be continuing my discussions with SBA and with DoD. I think it makes good sense. It is just that extra effort, that's all, and it doesn't cost anything extra.

Before we proceed, I am pleased to recognize two very important members of this committee. One comes from North Dakota and we will be welcoming one of his constituents here, who is now making an effort to get into the business. He has other constituents who have already demonstrated that Indian enterprises can work.

Senator Conrad has been working with Indians just about all of his life. He has been involved in business and money, and we are lucky to have someone who understands dollar signs. We are a grup of politicians here, but he understands money.

Kent, thanks for coming today.

Senator CONRAD. Thank you very much, Mr. Chairman, for holding this hearing. I think this is a very productive thing for us to be doing and I very much appreciate the leadership that you have provided.

The CHAIRMAN. The other Senator I am especially pleased to have with us became a member of this committee 48 hours ago.

He has returned to Washington. He was here before and now he has returned. I had the pleasure of working with him in recent days on a matter involving one of his tribes and the city and surrounding areas of Tacoma, WA. We have demonstrated to one and all that working together, we can come forth with great successes.

We were told at one time that this was an impossible situation, to get all the divergent entities together in one room working out the problems, but we have done so. It is a massive negotiating process, but it worked.

I am very happy to have my negotiating partner here with me today, Senator Slate Gorton.

Senator GORTON. Thank you, Mr. Chairman.

As I was saying before I was so rudely interrupted. [Laughter.] It is very nice to be back, and I appreciate that greeting.

The CHAIRMAN. He was interrupted for a few years. [Laughter.]

Senator GORTON. That's right.

The CHAIRMAN. Now I would like to call upon another success story, the Chairman of the Board of Director of Laguna Industries of Laguna, New Mexico, Mr. Ray Goetting.

STATEMENT OF RAY GOETTING, CHAIRMAN OF THE BOARD OF DIRECTORS, LAGUNA INDUSTRIES, LAGUNA, NM

Mr. GOETTING. Thank you, Mr. Chairman. I appreciate the committee and the committee's efforts.

Speaking of experience and long-term planning for Indians in the future, I can remember 50 years ago, we were talking about the same thing. It is a great day in my life to find the successes that have been established and the result of the work that has been done over the years by a lot of the Indian leaders who have come forth all these years.

I am pleased to see the Indians sitting on the rostrum with you today, workers whom I have worked with over the years. Our Indian leaders are becoming leaders in the real world, in the Congress, and in the Government and everywhere else. It is pleasing to me to see Pat, Alan, and the group of people sitting back here and these younger faces that I don't even know.

To you I want to compliment the attitude, the process by which we are approaching the problems today. Many are the same, many have been accomplished, but there is more yet to be done.

In the activities of Laguna several years ago, we had some governmental, industrial conferences around the country. At one of those in Wichita, KS, the Governor of Laguna and the president of the Raytheon Service Corporation got together because we had a vacant building that was created by another electronics company that came in and lasted for 10 years.

The minute they lost their contract they withdrew, and we had an empty, vacant unemployed operation existing and facing us again. Again and again those things happen.

We were fortunate at Laguna to have at one time the largest open pit uranium mine in the world. It provided some financial returns and royalties, but it came to end and our unemployment rose again to about 80 percent.

When certain contracting construction activities come in on a temporary basis, there is always success for a period of time and then unemployment. It is up and down and we talk about a new wind blowing, but we are always confused as to which direction it is blowing.

So we made this contact from some of the efforts years ago. In 1980 we became connected with the Raytheon Service Company upon their offer to help some tribe that had a place to work, which we did. The company came in at its own expense under voluntary activities. We paid our expenses; they paid theirs. It was a handshake arrangement which we really did appreciate.

Our unemployment at the close of our mines was 80 percent. The Raytheon Company, with financial assistance from several sources and the tribe, the Pueblo of Laguna, explored the potential capabilities and operational activities with their experience and with the Department of Defense.

The support was developed with the Department of Defense and our Congressional representatives. We really do have to thank the Senator from New Mexico, Senator Domenici, for his unending interest and effort on our part.

At the first contacts, we were discussing the operation of an overhaul and repair maintenance depot-type operation. In order to do that, we tried to establish specifically the kinds of capabilities that we had available on the reservation.

As Mr. Press just indicated, we are going to develop a qualifications and capabilities pamphlet that you can use in regard to helping us get together with the Department of Defense contractors, according to the type of work we can actually handle. I think it would be very well, even though tribes do not have an organized company or corporation operating, for them to put into your hands their capability and a skills assessment of what they can do and where the resources are for the kinds of work that they can accomplish.

When we started there were some failures with respect to tribal government and private operations, in that circumstances were never really understood by a lot of public corporations and some of the activities in the Department of Defense, or even SBA. So we actually incorporated under the laws of the State of New Mexico so that we could be at arm's length with regard to not only our tribal government, but also to the State Government and the Federal Government.

To operate similar a private corporation, we sold all of the stock to the Pueblo of Laguna, so they are our stockholders in that sense and we report to them as stockholders. The relationship on day to day operations is not conducted by the tribal government. It is conducted by the board of directors. The tribal council, serving as representatives of the stockholders, elect the board of directors, and they are all Pueblo and Indian members.

I would like to say that in the time that we have come a long way from my experience—we now have qualified people. The president and general manager of our corporation has a degree in business administration from New Mexico State University and a law degree from the University of New Mexico. He served as legal counsel for the tribe for a number of years, and is now running our operation. I would like to point to the fact that today there are qualified Indians among the tribes and among our people across the country who know what they are doing and can do a good job.

I want to go on to indicate to you that as a result, we report to the council from time to time, and although we try to furnish them all of the information they are interested in, we are really not subject to the changes of tribal government nearly so sensitively as we would be as a non-profit tribal committee operating its business. Under the Small Business Administration and the 8(a) certification a lot of the procedures are directed toward personally owned companies rather than a tribal government owned and funded organization.

It took us awhile to get through that, and eventually was successful. During the mean time, our operation of activities turned the type of product that we were planning on as an overhaul activity to what was really a manufacturing activity for the Department of the Army. We manufacture communications shelters with all of the equipment that goes in it, with the exception of the radio and the telephones that are inserted.

All that they need to do is insert them into the wiring, harnesses, cabling, and the racks, all of the permanent equipment in that room, as a product that can be hauled to a point of communication for our armed services in the field. I know we have the Raytheon Representative here who can describe that product a little better.

As we started, the skills that we had available have been a result of our people having served in the military, having been in electronics, having used communications equipment, having had the operations of the mining activity and the experience in overhaul, repair, and welding. We had a lot of the skills that were necessary to do the job that the military has for this product. We are not exactly unprepared to do the kinds of things that the Department of Defense or any other Government agency might have in the way of products, manufacturing, and so forth.

We feel that we have met the qualifications. The quality of work has actually surpassed the expectations of those who have been visiting our operation to such a high degree that our efficiency has grown and our ratio of recovery of the investment has grown so that this year we have developed a profit, declared a dividend, paid an bonus incentive to the employees, and when we had the ceremony to do that, the employees were actually very thrilled.

It was an emotional event. They were so happy in acceptance of the kinds of responsibilities that have been given to them that some of the women that work in our operation just broke down and cried because they appreciated the reward and the acknowledgement of the work that they had been doing for the past 2 or 3 years.

It really is difficult to explain all of the activities. I think we have a good presentation for you in terms of our activities. I would like to say that in our skills study, we interviewed over 800 people in our work force and divided them up into the skills for which they were experienced. We developed the operation so that we could tell exactly what we could do, how we could do it, when we could do it, and the quality of work we could perform.

When we started, we called again upon the Raytheon Service Corporation and they provided under contract with us the administrative management training introductory to the operational activities to lead us into the actual performance of the work to be done. I think we need to remember that this was the establishment of a new business. Actually we had no history of accomplishment; we had no history of operation; we had no manufacturing business. We were completely new.

Therefore, the coordination of the Department of Defense, the Congressional support that we have received, the attitude and acceptance of the Department of Defense—all of those have gotten together. And I would like to say that it was difficult to go through some of the procedures, but we now have them worked out, and I think that with the recommendations that Mr. Press has given, we would agree that some of those could be simplified.

The success of the development of a profit from which we continue to exist we need to reserve a large portion to continue our development of new product lines. The current product is not going to stay the same all the time. We need more than one customer. We need to have private industry activities; we need to develop a variety of products and customers so that when the expiration of the time allowed for the privilege under 8(a) expires, we will then be in business for the long term. We can not just require set-asides all the time.

We want these companies and these departments of the Federal Government, to recognize that we are a legitimate, competitive operation and that we want to remain that way. We want the continuance for the employment of the people on the reservation.

One of the difficulties that actually occurs—even if I had the money to go into business on my own and needed some financial support through banks or other financial arrangements, I could not do it because of the fact that the land is heed in trust. If something happened, a repossession-type of processes is restricted.

In some areas, we don't even have the privilege of building a home under FHA—no Government guarantees. If we can not build it for cash, we don't have it. Unless we have the money to build it and our own financial statement, we can not get financed.

The land does not belong to the individual. It is an assignment. So what we invest on those lands is our investment. There is no repossession. It has to be sold again to another Indian who is eligible to live on that assignment.

Often the arrangements that we have are not understood by a lot of people; what it takes to live and to compete and to operate on the level of the average American citizen. Some of the privileges that they recognize are not available to Indian people, individually on trust land reservations.

Some of those things have to be explained and covered in the opportunities that we are looking for in the future. We want to have that understanding. We would like to sit down with people and explain it over the long haul as to what history has done for Indians as well as to them or against them. We need to reconcile those elements together in order that we can do it.

Some of the recommendations that have been made to you, we would endorse and we would continue to recommend and encourage the operations that you have established here. I would like to say that we really do appreciate the opportunity to be here.

Sometimes when appearing before Congressional committees of this kind, only the Chairman is present. I want to particularly congratulate the other Senators on this committee for attending this meeting and indicating their personal interest. It is a great step forward in my opinion, and I want to thank you all for it.

Thank you very much.

[Prepared statement of Mr. Goetting appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Goetting.

I would like to advise one and all again that if you want to interrupt at any time, please feel free to do so because this is a discussion-type of hearing.

I was fascinated by your discussion on the history of the Laguna efforts. How long did it take you to get through the SBA on the 8(a) application?

Mr. GOETTING. When we first started, the response we got was, "I am sorry. We do not assist governmental activities." That was about as far as we could get, until efforts by Senator Domenici and a few of the others were brought to bear. Actually I would say that it took about 18 months once the pressure was there and we had their attention. I do not think the procedures are all that difficult if they are willing to listen and understand the problems and are willing to lean over backward and interpret the regulations to benefit the purpose and objectives for which they were written.

When they read them coldly to the extent, "I am sorry; this little technicality rules you out, thank you. Come back when you can qualify," it is difficult to say how long it would take.

We made several contacts—I will have to put it that way. In terms of time and effort, I think that there could be and should be a review toward simplification of the procedures to provide the fact that it is a little different in terms of the personal type activities as compared to the tribally owned situations.

I had worked on this in the beginning as the Business Manager for Laguna when we made the initial contact with Raytheon. I retired, and later Ron Solomon, our president, reactivated the project.

The tribal council asked me to come back as a member of the board of directors. I am not a stockholder—the stock is all owned by the tribal council. So without being a stockholder, and serving almost as a volunteer except for meeting expenses, we do not share in dividends, I had to provide a financial statement, a history of being disadvantaged so to speak, as though it were a personally-owned business.

This year we were even asked for our income tax returns, but we resisted that. I think it is just a misunderstanding in terms of the fact that none of the members of the board of directors own any stock except those as members of the tribe. So there needs to be some understanding in that regard as to how such arrangements really are conducted.

The CHAIRMAN. Mr. Goetting, you pointed out something which I am certain the members of the committee appreciate. Today the Senate is not in session, and I would venture to say that most of the Senators are out of the city but the majority of the members of this committee are here.

The vice chairman of the committee wanted to be here, but last night he had to suddenly leave for Arizona on an urgent matter. My ranking members are at this time conducting hearings with the Health and Human Services Appropriations Committee. If it were possible, I think you would have had just about everyone here.

As you have noted, times have changed. This committee is intent upon responding to and protecting the trust relationship that we believe exists between our Government and Indian country. So I thank you very much.

May I now call on the Manager of the Washington Office of Raytheon Service Company, Mr. Robert Perry.

STATEMENT OF ROBERT PERRY, MANAGER OF WASHINGTON OFFICE, RAYTHEON SERVICE COMPANY, ARLINGTON, VA

Mr. PERRY. Thank you, Mr. Chairman, for inviting Raytheon to come and participate in these hearings, and thank you, Ray Goetting, for your eloquent presentation of the Laguna program and how we got into it.

I am the manager of Raytheon Service Company's Washington Office and have been vitally involved in the proceedings in the past 8 or 9 years. I also serve as chairman of the Contract Services Association of America, which is an industry trade group with advocacy toward greater reliance by the Federal Government on the private sector for acquiring its vast amount of services. I think there is an application here since I will be talking about service-type enterprise companies as established with the Indian community.

That basic premise of advocacy, of course, is that the Federal Government should not compete with its citizens. I think that the Indian community would agree with that. My brief comments here this morning will focus on the American Indian Enterprise Development Program and the special niche which we believe that it can serve in the pursuit of that area.

The recent history of Raytheon Company's support to Indian industrial development testifies to our deep commitment to assist the Government in increasing and enhancing Native American business development opportunities. For Senator Murkowski, we just recently assisted an Alaskan Native firm in achieving 8(a) status, and they now are fully under contract and on site with the U.S. Navy in Alaska.

Our successful experience with the Laguna Industries Incorporated of Mesita, New Mexico, began in the early eighties. A study followed by a project planning and definition phase, the successful pursuit of some start-up grants from various Government agencies to help them get started, incorporating and organizing a viable business infrastructure, a tedious certification program, as Ray has already indicated, for 8(a) status through the Small Business Administration, arduous pursuit of the Defense Department's Depot System, and many other events too numerous to mention here, but which finally resulted in a contract with the Lagunas in late 1985 for over $10 million initially. Today, that program has grown to over $60 million, and the U.S. Army at Fort Monmouth, the customer, has labeled it as highly successful.

Much credit has to go to Senators Domenici and Stevens for providing enabling legislation in the 1982 Defense Appropriations Bill which encouraged assignment of work to American Indians. Also, to the Small Business Office of the Secretary of Defense for its faithful advocacy of the program on behalf of the Lagunas. Last but not least, to the citizens of Laguna, who never gave up hope that its alliance with industry would one day see the doors of that dormant plant that Ray mentioned, located on its reservation, reopen to scores of tribal employees assembling these vital Army communications systems in a depot environment.

Raytheon, certainly the Lagunas, and a large number of the Government agency offices have learned a lot through this precedent setting experience, but we can not rest on that. That is why we support the efforts of this committee. We encourage you to continue the lead in establishing a cooperative agenda that will enhance the successful development of American Indian enterprise.

The need for immediate implementation of an incentive program for American industry to assist the Native American initiatives was never higher. With defense budgets leveling off and modern military technology becoming more sophisticated and expensive, the potential for introducing newer and less experienced companies into business could become less attractive.

Conversely, some of the high tech companies still find it less practicable to economically satisfy some of its own requirements through its own resources. This could and often does provide opportunities for subcontracting to the Indian community.

We have proven with the Lagunas that American Indian enterprise can be developed to fill this niche very well, but industry needs economic incentive to bring creativity to these alliances which must exist. These may take many forms to include subcontracting, teaming arrangements, joint ventures, and management agreements, by which we operated with the Lagunas.

We further support the 5-percent incentive effort in section 504 of the Indian Finance Act. The concept of this incentive to defense contractors is a good one. If it is based on that portion of the total effort awarded to the Indian enterprise, then it would encourage the industry team member to be more generous in establishing his goals.

Currently many Government contracts have mandated minority subcontract requirements, but they are not always realistic. Corporations find it difficult to meet these goals for a variety of reasons. If the companies were provided with the opportunity for self-established goals and economic incentives to achieve them, then I believe these challenges could be met with dispatch.

These contract efforts must of course consider competency of the companies involved, quality assurance of the product, and the competitiveness of the current atmosphere of purchasing and procurement. Good transitioning of management, administration, and business development will assure that these qualities are met. And I believe the Lagunas are an example of that.

Raytheon was very pleased with its relationship with the Lagunas. It was rewarding and gratifying to be a part of their success in creating an industry that has improved greatly the social and business environment on the Pueblo. They now employ over 230 individuals with annual sales in excess of $13 million.

The manner in which Raytheon Company assisted the Lagunas over the past 8 years would not have qualified under such an incentive program as we have described. Raytheon encouraged the Army from the outset, and since it fit the procedures, to contract directly with the Lagunas. We assured our involvement in the success of the deliverables through a subcontract to Laguna Industries. As Ray has indicated, it was to provide management training, a quality control system, production monitoring, and a DoD approved cost accounting system to be established.

As the contract grew and progressed and the learning curve of the Laguna Industries rose, Raytheon progressively reduced our effort so that in 1988 we ended our involvement directly by mutual consent of the Lagunas, the U.S. Army, and Raytheon. We now only provide back-up tasking and some overflow subcontract work on a very small percentage of the total effort.

Perhaps a means could be established to encourage incentives for this type of assistance, and then more contractors could undertake similar projects. There has been no official recognition for this project in meeting the goals of the Small Business or the Minority Business or the 8(a) Programs. There has been no recognition for meeting the quotas or no incentive for that.

Although Raytheon earned a reasonable profit on its subcontract work to Lagunas in providing the on-site business management team, the extreme amount of management time and attention to which Ray has alluded which was given to the project by many people, was extraordinarily high in proportion to the material gains of that subcontract.

In summary, I recommend a rapid implementation of an incentive program for members of the defense industry who demonstrate in some form a business arrangement with Native American enterprise for the express purpose of developing these emerging companies and the defense procurement environment which supports them. We further recommend that the Defense Department put more of its Core Logistics and Depot Maintenance Requirements out for contracting. These are the kinds of things that the development of these enterprises are now capable of accomplishing.

The Lagunas and other Indian enterprises have now proven their capability, and this would provide additional opportunities for their growth in addition to being more cost effective for the Government. This is a fact that has been already confirmed by GAO and the Congressional Budget Office on contracting out as they have pursued and studied the effort.

The Raytheon Company intends to continue its efforts in this field. We trust that these deliberations will provide the means and the impetus for others to join us.

Thank you.

[Prepared statement of Mr. Perry appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Perry.

As you have indicated, the committee is well aware that doing business in Indian Country may not be the most attractive proposition. Therefore, something has to be done, possibly incentives or improvement and procedure of process.

The committee will be submitting questions for all of you in that narrow area because it is very important. We would like to get your view as to what, if any, incentives could be legislated or made part of the administrative process. What improvements can be made to facilitate business enterprises? We would like to know because there is a common thread. I don't know if you have noted this.

As chairman of the committee, the Chairman can "pack" the witness list—I am certain you know that. We can put only proponents or only opponents. We can hear from only negative witnesses or only positive witnesses. You can just choreograph everything if you wanted to.

In this case, I wanted witnesses that had this common thread, one of experience in this area so that you could tell us some of the problems you have faced. But also in each case, there is a success story, because this committee does not want to project a message to the rest of Indian country that the situation is hopeless. "Just give up—receive your welfare checks and food stamps and be happy about it." We don't want to send that message.

This committee is also aware that, although we are not sociologists or psychologists, there seems to be a tragic correlation between unemployment and suicides. For those of you who may not be aware, the suicide rate in Indian country is eight times the national norm. In certain age brackets, it exceeds 15 times the national norm. If employment has something to do with this, we want to do our part to bring this horrible and tragic rate of suicide down.

You will find that where people are happy, as in the Lagunas, and employed—I have checked on the Laguna suicide rate, and it is one of the lowest in Indian Country. But where you have 80 percent unemployment and in some areas, 95 percent, you will see that the suicide rate there is not 8 times the national norm. It is 20 times the national norm. I can point out communities where it is 30 times the national norm.

We can not close our eyes to those things. So that is how we rigged up the panel here. [Laughter.]

We wanted not only a good balance but to also give us an opportunity to acknowledge what you have done in this area and to thank all of you for the contributions you have made to improve the living conditions of our Native Americans.

Are there any questions any of you would like to ask at this point?

Mr. PRESS. I would like to supplement the record. My clients tend to be modest.

They talked about a dividend to the tribe. After paying bonuses to all their employees and after paying off all their debt, they issued a dividend to the stockholders, the tribe, of $450,000. That is in 1 year a 100-percent return on equity investment. Imagine if every tribe in the country had that kind of independent income coming in which is used for social and economic development programs.

The CHAIRMAN. We have a situation in Indian country where some of the leaders are well trained and dedicated, and in other areas, no matter how well intentioned they are, they have not had the background and experience for this type of enterprise, so I do hope that we can all pitch in and help each other.

May I now call on the representative of Northrop, the Director of the Supplier Relations and Socio-Economic Business Programs, Mr. Cooper.

STATEMENT OF JAY COOPER, DIRECTOR, SUPPLIER RELATIONS AND SOCIO-ECONOMIC BUSINESS PROGRAMS, NORTHROP CORPORATION, HAWTHORNE, CA

Mr. COOPER. Thank you, Senator.

Mr. Chairman and Members of the committee, it is a real pleasure for us to be here this morning. We really want to discuss our experiences at Newtown, North Dakota. We are very pleased with what has occurred there and we are very proud to talk about it.

In addition to that, I would like to make a few recommendations to this committee. As Mr. Perry was speaking, I thought for a moment that he had been looking over my shoulder while I wrote my testimony the other day, because I think you are going to find a number of things that I will repeat in perhaps a little different way.

We have a long-term commitment to supporting reservation business and subcontracting with Indian-owned businesses. We have strongly supported the United Indian Development Association in Los Angeles, and I personally have served on their board. I am pleased to be a member and to have been involved in the organizational formation of the National Center for Indian Enterprise.

In October 1970, Northrop Corporation's Electronics Division established an electronic assembly—and I point out that is eight years before Public Law 95-507—an electronic assembly facility on a reservation in Newtown, North Dakota. There are three indigenous tribes located in the area: the Arikara, the Mandan, and the Hidatsta.

What we had in mind was to create a low overhead, high quality facility that would assist in the competitive posture of that division. This facility was—and I apologize for this next term—in a relatively remote area.

Senator Conrad, to Los Angelinos, everything but Los Angeles and Honolulu is remote. [Laughter.]

Senator CONRAD. Wait until after the earthquake. [Laughter.]

Mr. COOPER. We have often wondered whether Arizona was going to be our border for the Pacific Ocean.

This facility, while in a relatively remote area has operated very effectively and has been a potent factor in several successful competitions won by the electronics division. In fact, the objectives of the facility have been fully accomplished.

Currently the plant employs from 88 to 92 persons and has become an important factor in the local economy. The percentage of Native Americans employed has run from 30 to 35 percent. The mix is about two-thirds female and one-third male.

This next point is very important. This plant has been certified to a 9858A Mil Spec level. That is the highest quality level called for in the Department of Defense. The current rejection rates according to the local DCAS are very low, and when compared to other similar facilities, the quality is excellent.

The products assembled at this plant include the F-14 Engine Monitoring System, and Turbine Engine Monitoring System, utilized on the A-10, and both these black boxes are delivered directly to the U.S. Government customer. They have source inspection right on the facility. In other words, they do not go to Hawthorne at all.

In addition there are other complex electronic assemblies for the F-5, the Weapons Delivery System, the Omega Navigation System, and the well known AWACS Program. These are all assembled and delivered to Hawthorne for incorporation into other products.

The CHAIRMAN. Have you got any plans for the B-2 there?

Mr. COOPER. We are going to discuss that—yes, sir.

The CHAIRMAN. You'll make points with me. [Laughter.]

Mr. COOPER. Now, while Northrop Corporation considers this plant a very successful investment overall, there are a few negatives associated with this thing that we need to look at. First of all, the educational background needed to build the management expertise is not immediately available in the Native American population.

Second, as a company-owned facility no credit is received on the SDB Program. Therefore, even though we have had queries from other large businesses to put business up there, when they found out we were owned by Northrop, they refused to put the business in there. In other words, the facility itself is very acceptable for other companies to come and put in a business, but because it is a

Northrop-owned facility and does not get credit under Public Law 99-661, they have not put their business there.

Now there are positives that far outweigh these negatives, including the fact that the facility has been an important factor in the local economy. The facility has produced very high quality electronic products for use on very sophisticated U.S. Government programs. Successful operation of the plant has demonstrated that with the devotion of proper resources and time, a viable enterprise can be developed on a reservation. This venture has developed a dedicated, trained Native American reservation work force which has produced for us a number of long-term employees.

Recently when our business base went down slightly, we began working with Senator Conrad's Office to make sure that there is a sufficient business base to keep that plant open because we consider it to be a very important facility. I personally went down to the B-2 Division and over to the Aircraft Division and have been working with their manufacturing people to get requirements up to the Newtown facility.

Because of the high quality level that we have been able to achieve there, this is a very potent possibility. We are examining current requirements to secure the continued operation of the Newtown plant and the maintenance of a business base that will assure us a competitive overhead rate.

Putting all this in context, I would like to respectfully make a few recommendations to this committee which I believe might assist in facilitating establishment of reservation enterprise. First of all there is no question that companies who invest in facilities or enterprise on a reservation need to be strongly encouraged.

In many instances it may be expedient for the company to retain ownership and control while the management expertise and the business base is being developed. We need to get off of this "who owns what" and think about the important thing, which is to get the enterprise on the reservation and help it grow.

We might designate a special 8(a) category which would permit large business ownership on a reservation, subject to certain very concise specified criteria, which of course would be prescribed by law or regulation. This would allow a sufficient incubation period which would foster the management training, infuse the expertise, and develop the business base that would encourage large businesses to invest the resources and the expertise necessary to grow reservation enterprises. In other words, it is really not necessarily a negative for a large business to initially control a reservation enterprise.

This special category would allow the solicitation of the business for the plant when further business base in needed. It would also accord credit to the large business pursuant to section 1207 of Public Law 99-661. As has been said by other individuals here, the 5-percent goal that we are working to achieve is very important in our business posture.

In my view, joint ventures, Indian-owned enterprise, and long-term team agreements will ultimately result from many of the embryo enterprises. The paramount result of this arrangement will be that the resources will be made available to organize, to train, and to implement reservation enterprise.

I believe that other service and product companies would grow around what could conceivably become an industrial hub. Industrial parks could actually grow on the reservation.

Large companies would be encouraged to identify other specific commodity areas. For example, we are looking at castings, forgings, and software needed to support Northrop programs. The tribal community and the companies could join together to develop these enterprises.

I referenced our role and my role particularly, which I am proud of, in the planning and formation of a National Indian Center, which is dedicated to the economic development of reservation enterprise. This center, properly supported and staffed with technical, management, and financial expertise could act as a powerful catalyst to bring large business and Indian enterprise together. Providing the cultural and educational liaison necessary to foster the understanding and effective business relationships will encourage and assist in the education and training of management and technical personnel who will in time assume responsible roles in reservation enterprise. A National Indian Center with a strong business perspective could assist in fostering reservation philosophy that would create the environment required to generate enterprise.

Finally, Northrop Corporation would like to sincerely thank this committee for allowing us the privilege of appearing here today. We firmly believe that assisting Indian enterprise is not in any way a charitable endeavor. It is only good business, both for Northrop and for the Nation.

Thank you.

[Prepared statement of Mr. Cooper appears in appendix.]

The CHAIRMAN. Thank you, Mr. Cooper.

Senator COCHRAN. Mr. Chairman, may I make an observation?

The CHAIRMAN. Please.

Senator COCHRAN. The Northrop Corporation also deserves to be recognized, not only for its work in this initiative described by Mr. Cooper, but also in its willingness to go out into the States to organize seminars and meetings with minority contractors wherever they are located to talk about the nuts and bolts of doing business with Government contractors and defense industry contractors. I have had that experience with Northrop in my State of Mississippi, and I know firsthand that it really does help acquaint a lot of small businessmen and businesswomen throughout American with these unique opportunities that they have in doing business with Government prime contractors.

I just wanted to make that additional comment and express my personal appreciation for the work that the corporation is doing. It serves as a model for many others in this entire area, and they are to be commended.

I notice the presence of Doug Todd here in the audience. He came to Mississippi with a team from Northrop to actually put on one of these programs in my State.

Mr. Chairman, I am going to have to go to another meeting. I have an interview to do with a group from my State. Let me just express again my appreciation to you, Mr. Chairman, for holding this hearing and for inviting the next witness to testify, Phillip Martin.

I have read his testimony and it is an example of how you can use local initiative in a situation where you are trying to do business in joint ventures with private industry in many areas. Not just defense contracting, but in many areas of business. He is going to describe some of those activities to the committee and they are very important.

We still have a lot of problems that we can solve. There is a success story to be told, but we still have a lot of challenges, a lot of things that can be done, and a lot of problems to solve.

I just want Mr. Martin to know that this committee is going to be very impressed with what he is going to say, but challenged too, to look for some answers to continuing problems that we have in this whole economic development area with tribal groups, particularly with those in the Southeast.

Thank you very much, Mr. Chairman.

The **CHAIRMAN**. Thank you.

Mr. Cooper, I am certain that you are aware that Senator Cochran is a very important Member of the Defense Appropriations Subcommittee also. [Laughter.]

Those little things help—you have just made points for your company.

Mr. **COOPER**. Good. Thank you, sir.

The **CHAIRMAN**. Chief Martin, if you don't mind, since Mr. Cooper brought up Newtown, may I call upon the chief from that area?

Mr. **MARTIN**. Surely, Mr. Chairman.

The **CHAIRMAN**. Our next witness will be the chairman of the Three Affiliated Tribes of the Fort Berthold Reservation in Newtown, North Dakota. He is the Honorable Edward Lone Fight.

STATEMENT OF HON. EDWARD LONE FIGHT, CHAIRMAN OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, NEWTOWN, ND

Mr. Lone Fight. [Remarks made in Native tongue.]

Mr. Chairman, I recall you visited the chambers at Three Affiliated Tribes and our medicine man gave you that name meaning, "A Person That Helps People." You certainly are that.

The Three Affiliated Tribes appreciate your leadership commitment to advance the cause of a better way of life for the Native American people. We really appreciate that.

The Three Affiliated Tribes also appreciate the leadership demonstrated by Senator Kent Conrad. He is an excellent leader who is providing good leadership for the whole State of North Dakota.

The Three Affiliated Tribes appreciate Northrop Corporation. They are a bright shining star around Three Affiliated Tribes and the Fort Berthold Reservation. They are providing employment to a high percentage of tribal members in a very depressed economy in the State of North Dakota.

As you know, oil is down, agriculture is down, and the drought was last year. When you see the Northrop plant there with cars outside, you know that they are doing a good job providing employment for area people. We really appreciate that.

We have land, people, and natural resources, but what we lack is financial capital. We just don't have the bucks to do the things we would like to do. I do not think there are any banks that are willing to provide loans on reservations, so that is one very big problem area that we have.

Although reservations are not near urban centers, I think that often we are close to facilities of the Department of Defense, the Department of the Interior, the Department of Energy, and so forth, other Federal agencies. I think that if this committee could recommend that they would be required to work with the tribes on such things as contracting and subcontracting before going to the outside, this would really greatly assist the tribal reservation economies.

Another recommendation I would like to make is that Section 1207 of the Department of Defense Appropriations under the five percent set-aside should also include Indian subcontracting and contracting. Mr. Cooper was talking about working with the Three Affiliated Tribes, and I will give him my commitment that I will work with Northrop in terms of developing a capable management team.

We have the Fort Berthold Community College on the reservation, and we could put a curriculum there that would meet his approval, and we could ask him to teach us. Not only to teach us, but to really go out and secure the products, commitments, purchase orders, or whatever. I give my commitment on that.

If we could expand section 1207 to include Indians— this is advancing the payments of contractors. Right now the Indian tribes or organizations do not have that avenue that Northrop does. If we could get that then we could also use it to get advance payments of contracting so that, whatever we need to do, we will have that capability.

I would like to add one more thought on the reservation economies and the procurements. CERT, which stands for Council on Energy Resource Tribes, developed a very deep analysis on the reservation economies. The results show that the Federal dollars, the bucks that flow into the reservation, take one bounce and they are off the reservation.

What we need is a multiplier effect, so that buck when it comes on the reservation will bounce about three or four times before going off. We need to develop a Gross Tribal Product, similar to the Gross National Product and all the different factors that go along with that.

Let me give you an example. I implemented that idea and talked with the area director, and our Superintendent of the Bureau of Indian Affairs, and I told them that all of the contract capabilities or things that you earmark, let us know, so that we can have a chance to subcontract those activities. They both assured me that there would be no problem, and here about three weeks later at White Shield, one of our depressed areas on the reservation, they had a demolition project to demolish some of the BIA houses and whatnot.

It is a $16,000 project, which is probably not much in your eyes, but to us in North Dakota and especially at Fort Berthold, that is good money. That could have gone into the pockets of local members. Instead, it was contracted out to an outside firm. They came in and while our people watched from the background, they burned the houses down and hacked up the concrete and took it away.

I think if we had, not only the commitment from the Bureau, but if they let us know—well, our tribal members could have used that $16,000 and been a lot better off. It was earmarked for Indians under the BIA appropriations, and I think it should have stayed there. I would like to see all the bucks that are appropriated for Indian causes and for Indian reservations remain there and become part of their budget. That concludes my statement.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Lone Fight appears in appendix.]

The **Chairman**. Thank you very much.

Since this is in North Dakota, let me call my friend from North Dakota.

Senator **Conrad**. Thank you very much, Mr. Chairman.

First of all I want to indicate that Ed Lone Fight is one of the very strong leaders that we have among the Indian people in our State. Without his leadership, we would have had a much more difficult situation facing us on his reservation. I want to commend Ed for the extremely strong leadership that he has provided. I also want to publicly commend Northrop because I know firsthand the commitment that Northrop has made, and it has not always been easy.

Mr. Chairman, I would like to review with you briefly the experience we have had over the past several months. I had heard through the grapevine that the Northrop plant might be endangered at Newtown, so I arranged to go out to Los Angeles to meet with some of the members of the board. I was informed that they were in fact looking at three options because there was not enough business activity to keep the operating rates competitive at this point.

The three options that Northrop was having to examine were: Closing the operation, adding business to supplement the business already there, or looking to sell the facility so that it could perform as an 8(a) contractor. A very central reason—Mr. Cooper has made the point here, and I think we need to take very serious note of the recommendation that he has made—is that they were not being allowed to get credit under Public Law 99-661, and as a result, when they went to other businesses who had shown an interest in putting additional work there, when they found out the could not get credit, their interest subsided.

We would all like more businesses to be Indian-owned and operated. That is an ultimate goal that I think we all share. But as an interim step, we have got to have the business and the enterprise there first. We have got to be able to train the people, to have the business activity, to have the jobs.

I must say that I was deeply concerned about what I heard at that board meeting. I went back to North Dakota and subsequently asked Northrop to join me at the Newtown plant for a review of what was happening. Doug Todd, the Washington representative came out with two other executives who came in from California, again, very much in line with the responsiveness of Northrop, and we had an extended discussion of the options.

Northrop indicated that they felt that they could find additional work to assign there, but this corporation with a decreasing work base of its own—if you look at the numbers of employment for Northrop, they are going down quite dramatically—is under significant pressure. We are inadvertently adding to that pressure by not allowing some form of credit under Public Law 99-661.

Mr. Chairman, I think this is an area that we need to focus on very tightly to make possible the building of an economic base. You were extraordinarily gracious and generous with your time when you came to our State and went to all of the reservations. I think you could see the difference in those reservations where we have some economic base, a plant that is providing employment, that is training, with the emergence of a leadership base of people like Ed Lone Fight, who are educated, intelligent, and ready to take on the challenge of this new age.

It is imperative that we have these kinds of operations for there to be the emergence of that new group of leaders. So Mr. Chairman, I think this example is so telling that we need to pay special attention to what Mr. Cooper has said and to what Ed Lone Fight has said, and we need to search for a way of making sure that businesses who are in this position can get some credit, whether it is a transition matter— maybe that is what we have to look at—but some way to encourage these businesses to locate there, to operate there, and to help us train a work force.

Mr. Chairman, I very much appreciate your allowing me this time.

The CHAIRMAN. I can assure that I have been impressed by your statement and by the testimony of Mr. Cooper, and the solution or suggestion that you are making is a real-world solution. Often when we draft laws, it looks nice but it does not face the uniqueness of the problems of the real world.

What you have cited is a problem that, if not addressed, will just continue on and on forever, even with a nice law on the books. So under your leadership, we will put that high on the agenda. I can assure you that you will have a measure not only drafted but also introduced by the time May comes to an end.

Mr. Lone Fight. Thank you, sir.

The CHAIRMAN. I thank you both, and give my best to the folks there.

Mr. Lone Fight. We will do that.

The CHAIRMAN. Now, if I may call upon the leader of the Mississippi Band of Choctaw Indians. He is the one who has all the success stories and we are so very proud of them. The chief of the Mississippi Band of the Choctaw Indians, the Honorable Phillip Martin.

STATEMENT OF PHILLIP MARTIN, CHIEF, MISSISSIPPI BAND OF CHOCTAW INDIANS, PHILADELPHIA, MS

Mr. MARTIN. Thank you, Mr. Chairman. I did not know I was the leader of the pack—I thought I was behind.

At any rate, I am glad to be here and would like to compliment you for your leadership and interest in the welfare of American Indians. We are glad that you have been out to the reservations and have educated yourself firsthand on some of the problems that exist there.

I am also glad to see so many of the committee members here, particularly our own Senator Cochran. Senator Cochran has been very helpful. As a matter of fact, all of the Mississippi delegation has always supported our efforts there on the reservation.

I would also like to compliment Kathleen Hooker of your staff. We know that she is new and has not been introduced to the Indian world, but having talked with her, I believe that it will not be long before she will have a good handle on some of the issues that face us here in Washington.

I would like to make a brief review of what we have done so far for the benefit of some of the new people here, particularly in DoD and 8(a). Yesterday we had a good meeting where we discussed a lot of the issues that have been discussed here. We had a good feel about what should be done.

The Choctaws in Mississippi have made significant progress in economic development and the creation of jobs. We have been in business since 1979, almost 10 years now. From a very small beginning we have grown a considerable amount in terms of placing people to work as well as investment and sales.

We have seven business enterprises on the reservation. In 1979 we did not have any. We have five manufacturing enterprises, as well as two businesses. One of those is a shopping center which we recently built, and a residential center, which is a 120-bed nursing home, which is a business enterprise.

We have three plants that are 100 percent tribally-owned producing a lot of automotive wiring harnesses. I might back up to say that we are in the automotive business.

We have two joint venture contracts. I was very interested in what Mr. Cooper and Senator Conrad were saying about this subject. I would like to add this thought because we have a joint venture with a radio speaker company, Oxford Speaker of Chicago. He wanted the minority status. He wanted to join up with a minority group so he could increase his sales, but the radio speaker is very high tech. You have to have a lot of research and development.

Because we are a 51 and 49 arrangement, Ford insisted that we become a full supplier. So we sat down with Ford and our partner and worked out a 5-year plan on how we could do this. Going through different steps and building up our own capability at the local level, within 5 years we should become full-fledged suppliers of radio speakers to Ford Motor Company.

With ideas and arrangements like that, I believe I understand what he is talking about. Our partner himself was not allowed to do that. Oxford Speaker could not let us be the leader in that because it is too high tech. We understand that, so we worked this arrangement out, and we have a good working relationship going toward that end now.

We also have a joint venture with an electronics company, for automotive wiring harnesses and radio speakers, it totals about $28 million in sales. We have worked with Navistar Corporation, United Technologies, Ford Motor Company, Chrysler Corporation, Xerox and Richmond Instruments in the particular plants that we have. So we are talking about beginning with a $500,000 contract in 1979 with a few employees. We have now come up to a projection for this year with a total investment of $21.5 million, employing nearly 1,500 people, with a projected annual sales of $54 million.

That sounds good, but I think that after hearing some of testimony here, I may be in the wrong business. I don't have any dividends to give out yet. The tribe is in hock. Out of this $21 million, something a little over $17 million is borrowed to make this operation function. The part that the Federal Government has played in terms of grants is only $4.5 million.

When we talk about taking risks, the big companies are not the only ones taking the risks. We are also taking a lot of risks. As a matter of fact, we are probably way over our head at this time.

Our objectives were to decrease our high unemployment, not necessarily to make money or profit, although we are not against that. We need revenue for the tribe and we are trying to find ways to make some income for tribal operations.

It is not an easy task to go into business, and to think that because you are going to hook up with some big corporation, you are going to have immediate success, is simply not true. You are going to have to produce the kind of quality that the vendor wants. If you can not produce the quality and quantity and deliver it on time, chances are good that you are not going to stay in business.

I am really proud of my people that they have been able to meet the challenge. They have produced the kind of products that industry likes, quality products, and they have worked hard. When I go into those plants and see some young adults working, seeming to enjoy the work, and I see them in the community with visible progress, better clothes, better automobiles, buying things for their homes—that is what the whole thing is about, to help people to shed themselves of welfare and get into a productive mode where they can care for themselves.

I would like to encourage businesses like are represented by these gentlemen here, and there are a lot of other businesses throughout the United States that are looking for ways to hook up with minority groups so that they can get into business. I think we are only just beginning here, and I believe that if we can continue to have these kinds of dialogues, not only in this hall but in some of the halls of the agencies and in the private sector, I believe we can get some things going here that could be beneficial to everybody.

Yesterday we talked about three things that you charged the conference with. The purpose was for Senator Inouye, as Chairman of Defense Appropriations Committee, to require the DoD to enhance mechanisms which will award Indian enterprise a fair share of procurement contracts. This requirement requires creativity, problem solving on the part of the procurement officers, particularly for reservation joint ventures. That is really true.

Right off hand I think I would suggest that we establish better communications with the Department of Defense and maybe the Department of Defense might want to have meeting with tribal organizations somewhere in the country where the tribes could come to sit down with DoD officials and talk about how they can work out a better relationship and maybe change some of the concepts that are there. We could then get down to the business of doing business with the tribes if that is what the law requires. I would think that dialogue needs to be established so we can get going.

Under item 2, support enactment of section 504 of the Finance Act, which gives a 5-percent incentive to defense contractors subcontracting to Indian enterprises on the reservation, I really do not have any objection to that section. The implication is there, however, that the contractor is taking the risk, and I just pointed out that, that is not true.

If it is a joint venture partnership, then all partners are going to have to take the risk, especially at the start-up time when there is a lot of high overhead that has to be dealt with. No industry is going to come in and give you a $10 million contract unless you have a proven record, so you are going to have to start small, thereby raising your costs way up until you can train your people and get into real productivity.

In our community there is not a lot of technical resource available. If we are going to do high tech work, then we are going to have to hire people who have that expertise, training, and education.

In a joint venture situation we do not want the tribe to always be subservient to the big corporation. We ought to work as partners, and if we are going to work as partners, then we are going to have to be able to have expertise on our side of the ledger as well. I would suggest to you that some consideration be given to the tribe to get into business as well.

The third item was the clarified amendment to Public Law 100-556 in the SBA 8(a) Program as it relates to Indian tribes and joint ventures. I do not have much to comment on that because we have had very little experience dealing with the 8(a) Agency. What little contact we have had with them has always been bickering and negative. It has always been, "What are you guys doing here, anyway?"

Because of 8(a) insensitivity to Indian tribal government, I believe we need to establish a central clearinghouse for Indian 8(a) applicants as soon as possible, maybe here in Washington, and give the SBA Program a chance to work. Maybe if we can sit down with people from SBA as we are doing here, then things could possibly change for us in the near future.

Those are the three recommendations I would make to you. Thank you.

[Prepared statement of Mr. Martin appears in appendix.]

The CHAIRMAN. Thank you very much, Chief Martin. You are a bit too humble about all of this.

It should be noted that 15 years ago, things were not too good. The unemployment was in excess of about 70 percent. Today there is less than 10 percent unemployment. In the past 15 years, if my recollection is correct, your per capita income has increased by about 200 percent.

It just shows that with good leadership and good relationships with your neighbors, success is not an unreachable goal. Chief Martin has demonstrated that in far off Mississippi, things can be done.

If I am not mistaken, your tribe is the number one employer in your county, isn't it?

Mr. MARTIN. In Neshoba County, yes.

The CHAIRMAN. And it is one of the largest employers in the State?

Mr. MARTIN. About 15th in the State, yes. That is pretty good when you think that 10 or 15 years ago we almost did not have job one.

The CHAIRMAN. I think you can be very proud of yourselves.

I would hope that you can share your experience with other Indian nations and tell them that it can be done, because you have demonstrated that it can, and it continues to be done. I thank you very much, Chief, for your contribution today.

Mr. GOETTING. Mr. Chairman, before Phillip leaves, I would like to say to him and to Ed, that whether or not the dollar bounces too many times on the reservation to provide the right kind of economy, we need to add the kind of employment, the kind of salaries, wages, and benefits to the community to make it self-supporting. It is a serious thing when you can put cars and improvements in the homes, raising the level of living of Indian people.

In our operation in the 4½ years we have existed as an employer we have put almost $10 million into the local economy of the reservation through salaries, wages, fringe benefits, rental on the buildings and land that we have given to the tribe, and all those things do circulate within the reservation. It really does help, not only the families who work, but also those who are providing services in the peripheral segments of grocery stores or what-have-you. It does do a great deal.

Thank you.

The CHAIRMAN. As one of the witnesses said, doing business with Indians is good business.

Now I am pleased to call upon the representative from the Department of Defense. He represents the Under Secretary of Defense, Mr. Robert Costello.

Mr. Crouch.

STATEMENT OF HORACE J. CROUCH, REPRESENTING ROBERT B. COSTELLO, UNDER SECRETARY OF DEFENSE FOR ACQUISITION, DEPARTMENT OF DEFENSE, WASHINGTON, DC

Mr. CROUCH. Thank you, Mr. Chairman.

I am pleased to appear before this committee to testify on the strong Department of Defense commitment to all small and small disadvantaged businesses including those small disadvantaged businesses owned and operated by Native Americans and by Indian tribes. I have with me today Mr. Hugh Smoczynski, who is the DoD Action Officer that monitors all Indian programs.

DoD maintains a significant small and small disadvantaged business program because we recognize that small and small disadvantaged businesses play a vital role in our national security and contribute significantly to our defense industrial base. I am enclosing with my statement four charts which depict our small and small disadvantaged business program performance during the past five years. While I will not discuss the data extensively, I would like to point out some noteworthy statistics indicated by these charts.

Of the $130.8 billion in prime contracts awarded to U.S. business firms by the Department of Defense during fiscal year 1988, approximately $25.2 billion or 19.2 percent was awarded to small businesses. In addition, our major prime contractors awarded $22.3 billion in subcontracts to small business concerns during that fiscal year. This means that small businesses received more than $47.5 billion of defense contracts.

To put these figures in perspective, let me merely say that more than one out of every three defense dollars awarded to U.S. business firms went to small and small disadvantaged businesses in the past fiscal year. When you consider what the Defense Department buys with our dollars, all the major systems, planes, ships, tanks, and missiles for which small and small disadvantaged businesses could not possibly bid, we think that we have a pretty good program.

The Department is fully committed to increasing the role of both small and small disadvantaged businesses in defense procurements. We are aggressively pursuing an overall strategy to create small business opportunities for all segments of the small and small disadvantaged business community.

For example, we have established specific goals to increase our contract awards to these firms. Our objective is to award 4 percent of our total contract dollars to small disadvantaged businesses during fiscal year 1989, 4.5 percent of these dollars in fiscal 1990, and 5 percent in fiscal year 1991 as mandated by section 1207 of Public Law 99- 661.

Last year the percentage of our contract awards in this category increased 10 percent from 3.2 percent in 1987 to 3.6 percent by the end of fiscal year 1988. During the same period, the dollar value of our prime contracts, 8(a) contracts, and subcontract awards to small and small disadvantaged business concerns increased by 10 percent, going from $4.3 billion in 1987 to $4.7 billion in fiscal year 1988.

Although we still have a long way to go to make this 5-percent goal, we are making progress. We must point out, however, that there really is no quick fix to solve this problem.

To meet the 5-percent goal we are taking several innovative steps and employing a number of tools, including statutory authority that Congress has given us. For example, we are selectively using the authority granted by Section 1207 of Public Law 99-661, which allows us to pay up to 10 percent above the fair market price and to use less than full and open competitive procedures; to establish small disadvantaged business set-asides, and a 10- percent evaluation factor on unrestricted solicitations when an award is based on price or price-related factors.

In addition, we are using the authority of the statute to provide technical assistance to small disadvantaged businesses. We have already held 17 conferences nationwide aimed at identifying and stimulating participation of small and small disadvantaged businesses in defense contracting.

A number of these conferences have been held in areas with high Native American populations, such as Colorado and California; 11

more such conferences have been scheduled for this year in sites from Puerto Rico to Hawaii.

Among other recently enacted legislation that impacts in the area is Public Law 100-656, the Business Opportunity Development Reform Act of 1988. It revised significant aspects of the 8(a) Program. It includes authority to allow for special arrangements between tribally-owned businesses and large business firms in the performance of contracts awarded under the 8(a) authority.

The Small Business Administration [SBA] has not yet issued guidance concerning implementation of this provision of the statute. However, a request for public comment was recently published in the Federal Register.

As I am sure the committee knows, the DoD has special outreach programs to provide greater opportunities for Indian businesses in the defense acquisition program. One special initiative includes a memorandum of understanding between SBA and DoD wherein SBA includes more Indian businesses in the 8(a) Program, and we are best able to help Indian firms that are in the 8(a) Program. We support this initiative, of course, by providing contracts to the SBA.

For the record, I would like to point out that in fiscal year 1988 the Department of Defense's 8(a) contract awards to Indian-owned firms amounted to $133 million or about 73 percent of the total Government contracts awarded to Indian firms under this program. This represented a significant increase over fiscal year 1987. It was 65 percent—we moved up to 73 percent. We believe that our dollars going to the 8(a) program will continue to rise.

Another initiative is a program in which DoD, under a cooperative agreement managed by our Defense Logistic Agency, funds five procurement technical assistance centers to help businesses owned by Native Americans market their goods and services to the Department of Defense. In fiscal year 1989, at which time we hit the mid-point, the total program costs for maintaining these 5-centers amounts to more than $800,000. The Department of Defense is paying $500,000 as its share of this cost.

These centers are on the local scene, giving day to day assistance to Indian business firms, and can provide much greater technical assistance than DoD representatives possibly could. The assistance provided by these centers includes help in preparing bids and proposals and in setting up quality assurance and accounting systems which DoD representatives may be specifically precluded from doing. We believe this is an excellent program which is being enthusiastically received by the Congress and their Indian constituents.

We are also aggressively pursuing a series of other initiatives to increase the participation of the small disadvantaged business community in our acquisition process. These initiatives, which are broader in scope and consistent with the intent of section 504 of Public Law 100-442, encourage increased subcontracting opportunities for Native American businesses. Since our written statement details these 10 initiatives, I will not enumerate them at this time.

We have also implemented measures which permit payment of a 10-percent incentive fee to our major prime contractors for exceeding their small disadvantaged business subcontracting goal, provided the goal, of course, is a minimum of 5-percent. Under this provision the prime contractor will receive 10 percent of the difference between the total dollar amount of subcontracts awarded to small disadvantaged businesses and the goal amount stated in the contract. For example, if the 5-percent goal amounted to $10 million and the major prime contractor awarded $11 million to small disadvantaged businesses, the prime contractor would receive 10 percent of the $1 million delta, or $100,000.

Finally, in conjunction with our efforts to encourage prime contractor participation, I meet monthly with the Aerospace Industries Association which represents many major prime contractors to monitor their progress, share ideas, and to encourage their efforts to achieve the subcontracting goal.

In closing, sir, let me say that small and small disadvantaged businesses are vitally important to our national security. They are the key to maintaining a strong defense industrial base. Therefore, we must all work together to increase opportunities for this segment of our society, the small and small disadvantaged businesses, including providing opportunities for firms that are owned and operated by Native Americans. In this regard, we are convinced that our strategy and the aggressive plan we have laid out will increase these opportunities for small and small disadvantaged business participation in our contracting process.

Have we done enough? Let me answer by saying that there is always room for improvement. We intend to continue to increase the number of dollars going to firms owned or controlled by Indian enterprises.

Thank you, Mr. Chairman. This concludes my statement.

[Prepared statement of Mr. Crouch appears in appendix.]

The CHAIRMAN. Mr. Crouch, I thank you and I commend you for the positive attitude that is reflected in your statement. I can assure you that this committee looks forward to working with you and your unit in assisting Native Americans.

Do you have any comment that you would like to make on the testimony that others have presented today?

Mr. CROUCH. Only this, sir. We appreciate what the major prime contractors are doing because that is where the dollars going to the Indian firms, other than the 8(a) program are more easily done. They can provide these opportunities, and I believe that is where the big dollars are.

Out of the $130.8 billion in fiscal year 1988 prime contract awards, $95 billion went to the first 100, or the largest of our major prime contractors. It is difficult for the Defense Department to carve out any dollars going to small disadvantaged businesses from this sector. They have to help us in their subcontracting programs to do this.

The CHAIRMAN. I appreciate your statement and your attitude, as I pointed out.

Often we in Washington who have been blessed and who lead a good life fail to realize that there are those in our society who just have not quite made it yet. We just take for granted that everyone knows how to use a typewriter, to use the telephone, to fill out forms, and all those things.

I still remember many years ago when I was going to law school in this city in 1950, I was asked by the Commander of the Disabled

American Veterans to represent him at a hearing in the House. I was a young law student then.

So I reported to the House clerk and the clerk told me to prepare 20 copies, no more than 20 pages, and to be in the hearing room by 8:45 o'clock on the appointed day. I prepared myself, bought a new suit—I did not have any suit at that time. I did not have any mimeograph machine so I had to type this statement eight times. Then I submitted that at the proper time and I appeared before the committee.

The chairman said, "I welcome you, sir. We have received your statement and thank you very much. It is a fine statement." That was a very costly morning for me. [Laughter.]

I have always remembered that. That is why we are having this type of discussion. And I have always remembered that not everyone knows how to type and how to fill out these forms that we have for our citizens. I am pleased to tell you that I do not fill out my tax form. If I had to do that I would be really frustrated.

So I hope that all of us can try to work out programs to assist our Native Americans, keeping in mind that we may be dealing with disadvantaged people, as you pointed out, and we should lean over backwards a little.

I do commend you for leaning over backwards a little.

Mr. CROUCH. Thank you, sir.

The CHAIRMAN. Ms. Albertson, the Deputy Associate Administrator for Minority Small Business and Capital Ownership Development of the SBA, I thank you for being so patient and waiting this long. We wanted the best witness as the anchor person.

In fact, you are the only lady in this group of men here today.

Ms. ALBERTSON. I am representing another minority, apparently. [Laughter.]

STATEMENT OF MS. JOHNNIE L. ALBERTSON, DEPUTY ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT, SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC

Ms. ALBERTSON. I am happy to be here, and thank you for inviting our agency to present our views.

Mr. Chairman, I am not going to read a whole statement. I think that what I would like to do is to go through it very briefly and summarize it and then answer any questions or take any suggestions from you or from the participants at the table.

The CHAIRMAN. In fact, if you could just comment on some of the points that were made by the other witnesses, that would be extremely helpful.

Ms. ALBERTSON. We have given you a copy of the statement for the record.

I would like to describe the joint venture, which seems to be the thing that is of the most interest to people, particularly the big businesses who are being involved in that. There is a lot of interest in the new regulations, which have been referred to a number of times today.

I think I need to go over our proposed regulations for Public Law 100-656 so that those who are here in the audience who may not know of them and those of the Indian representatives here would be able to comment. We have not received comments and the closing period for comment is April 24. As far as I know, we have not received any comments from any tribal or Indian organization on these regulations which seem to be very important to them.

Let me read a summary of that section that deals in these proposed regulations with tribally-owned concerns and the 8(a) Program.

> Tribally-owned entities are eligible to participate as a joint venture partner for purposes of performing an 8(a) contract. These joint ventures must meet all 8(a) eligibility criteria. One, size: The joint venture must be small under the SIC code for the procurement. For purposes of determining size, joint venture partners are found to be affiliates and the size determination is based on the combined of the two concerns.
>
> Two, prior approval: The proposed joint venture must be approved in advance of contract award by the Associate Administrator for Minority Small Business and Capital Ownership Development.
>
> Three, additional requirements: If the joint venture is between an 8(a) concern and a non-8(a) small business, the joint venture must be for the substantial benefit of the 8(a) concern. An employee of the 8(a) concern must be the designated project manager. At least 51 percent of the revenues earned by the joint venture must be distributed to the 8(a) concern, and the 8(a) concern must perform with its own work force a minimum of 50 percent of the labor services contract, 50 percent of the cost of manufacturing supplies contract, 15 percent of the cost of the contract, excluding materials, and 25 percent of the cost of the contract on special trade construction. General construction is at 15 percent.

One of the things that was said by one of the Indian representatives at this table this morning was the need to have the buck bounce repeatedly on the reservation. Part of the reason for these proposed regulations is to be sure that in those joint ventures, the money generated by those joint ventures remains with the tribe and on the reservation.

In the other area, the gentleman representing the Choctaw Nation said that he was very concerned, however grateful he was for the participation of the big business organizations in making possible the tribal businesses, that he wants very much to see his people benefit directly from that with training and expertise. Our proposed regulations in terms of this new legislation, Public Law 100-656, dealing with tribal businesses and joint ventures, is aimed in that direction also. We are eager to develop entrepreneurs among the Indian population.

> Special provisions for joint ventures for tribally- owned entities: In addition, tribally-owned entities may also participate in joint ventures with concerns which are not subject to the following limitations.

This is also from the new law, Mr. Chairman.

> Ownership: The tribally-owned concern must own and control 51 percent or more of the joint venture. The joint venture must be located on the reservation or on land owned by the tribe. The joint venture must perform most of its activities on such reservation or tribally-owned land, and at least 50 percent of the work force must be members of the tribe.

Dealing with the Small Disadvantaged Business Program of the Department of Defense that Mr. Crouch referred to, we are responsible at SBA for deciding protests of self-certification of disadvantaged status made in this connection, and under existing agency policy to date for joint ventures which have claimed SDB status, SBA has only decided whether the partner claiming disadvantaged status is disadvantaged. We have always deferred to DoD to establish policy regarding the eligibility of joint ventures for the SDB participation.

We are meeting with representatives from Mr. Crouch's office to develop policy, however, to provide more guidance in terms of these sorts of eligibility issues that are really important, far more important than we sometimes recognize, to the success of the 8(a) Program and particularly tribal participation. I was just going to generally cover that because I think there has been great interest expressed here today.

Let me repeat that I would urge all of the people interested in these proposed regulations to make their comments known to the Agency before April 24 when the comment period is concluded because we are interested in having them. I think that in the interest of time, I will conclude with that.

Thank you very much, Mr. Chairman.

[Prepared statement of Ms. Albertson appears in appendix.]

The **Chairman**. Ms. Albertson you have touched upon something that is very essential and important in our relationship. The Government of the United States has its processes and procedures. One of them involves a notice in the Federal Register.

Now, those of us who have a large staff can assign people to look at the Federal Register every day for things of interest to us. I doubt if many of the tribes have men and women who receive the Federal Register, much less look over the Federal Register.

Therefore, when this matter was brought to our attention, we should have had the sensitivity to realize this. We are now going to start a new program whereby we, as soon as we see something of interest in the Federal Register, will be sending information to Indian country.

It is not part of our responsibility to do that, but otherwise you do not have any outreach. You could very likely send notices to Senators and Representatives with Indian reservations, but this may depend on their level of interest or their staff. Therefore, we have decided to take it upon ourselves to look through the Federal Register every day and then mail the information out to Indian country.

This is the kind of leaning over backwards that we have to do. If I wanted to be a strict chairman of this committee, I would say, "That is not part of our responsibility." But we are going to do that.

I do want to thank you, Ms. Albertson, for being so helpful. We look forward to working with you. Today's meeting—I don't call it a hearing—convinces me that if we can get together and exchange notes and views, much can be done.

Let me now ask Mr. Crouch and Ms. Albertson, could you arrange with my senior staff to have a seminar-type meeting where you could express your thoughts on what the regulations are? This would be a learning experience for my staff.

We have already met with most of the leaders of Indian Country to get their thoughts. Now we would like to get your thoughts, and then we can bring it all together.

Ms. **Albertson**. We would be happy to meet with your staff.

The **Chairman**. And Mr. Crouch?

Mr. **Crouch**. Yes, Mr. Chairman.

The **Chairman**. I would like to thank all of you for participating this morning. Friday is not the best time to have meetings of this sort because everyone wants to leave the city.

These are important matters, very important to the people who live in Indian country, so I thank you for your contributions.

Yes, Mr. Goetting?

Mr. **Goetting**. Mr. Chairman, on the notification to Indian tribes about the SBA regulations and the publications in the Federal Register—a lot of times the regional office or the area offices with whom we deal need to contact the tribal officials, not just the 8(a) companies. We are already 8(a).

Our tribal officials call council meetings once a month or once a week, and sometimes the time it takes to comment passes almost before they have an opportunity to read it. The time for comments is short. Even if their attorneys develop a comment, it sometimes has to be approved by the council before the tribe will submit it as a tribal comment.

If is difficult sometimes, particularly if councils meet infrequently. Some councils have to have the whole tribal membership meet. There are different types of organization and it makes it so difficult.

Some of the comments you have from our attorneys who are scattered throughout Indian country, have had some Indian input, but the fact that you do not hear from the tribes may be this communications thing. I am glad to hear that you are working on that with your staff to notify the tribes, not just the companies.

The **Chairman**. Any last words?

Mr. **Stallings**. Senator, as you know, in conjunction with the committee, we conducted a one-day conference in this room yesterday on these initiatives. Clearly, we believe there is a concensus building on the proposed regulations. Certainly, SBA will be hearing from Indian country.

My one comment would be that the draft regulations primarily apply to people and tribes who are in the (8a) program now. I think that the followup discussion should analyze how we increase participation of tribal concerns in the 8(a) Program. Because we are only talking now about a handful (12) of tribal companies who are in the program. We have been talking about increasing this participation for about 6 years, and that frankly has not happened.

The **Chairman**. We are going to make it happen.

Mr. **Stallings**. Thank you, sir.

The **Chairman**. With that, I thank you all once again.

We are adjourned.

[Whereupon, at 12:20 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Mr. Chairman and members of the Committee, thank you for this opportunity to appear before the Select Committee on Indian Affairs.

My name is Steven L.A. Stallings, I am an enrolled member of the Rincon Band of Luiseno Indians of Southern California. I am here in my capacity as the President of the National Center for American Indian Enterprise Development (formerly the United Indian Development Association). My biography is attached as Exhibit 1.

We are a national not-for-profit management consulting organization formed in 1969 to assist tribes and American Indians to achieve self-sufficiency through business and economic development. We have acquired over $150 million in financing and contract opportunities for Indians while starting up 388 new businesses and creating 2,806 new jobs. Our most recent Annual Report is attached as Exhibit 2.

Each year we conduct the Reservation Economic Summit on Enterprise Development, last year's - as this year's - conference and summit gathered leaders from Indian tribes, development organizations, and private industry to respond to issues and initiatives, and to offer recommendations on how to proceed with the development of business enterprises on reservations. Indian leaders learned how to plan and execute successful business and economic development efforts, using the most current approaches and techniques.

A highlight of our 1988 Anaheim, California conference was the speech given by Senator Daniel Inouye, Chairman of the Select Committee on Indian Affairs. He told 300 guests, including representatives of defense and aerospace prime contractors, how he would chair the Subcommittee on Defense Appropriations starting in January 1989. He made it clear, in no uncertain terms, that he wanted and, indeed, expected the defense and aerospace industries to do business with American Indian firms. Senator Inouye said that he would see to it that incentives would be enacted to support this effort.

The conference culminated in a Summit group exercise to review and recommend priorities for American Indian business and economic development. The number one priority cited by participants was financing. Major obstacles to enterprise development are the lack of capital in Indian communities and the limited access to financial markets off the reservation.

The participants also recommended the establishment of an organization to advocate for Indian business interests on a national basis.

Responding to the recommendation of the participants we have completed a major, 10-month reorganization program, creating the first national organization solely dedicated to Indian self-sufficiency through business development. The National Center for American Indian Enterprise Development will advocate for Indian economic interests by:

1. Improving the information and resources available to American Indians in business and economic development;
2. Enhancing the impact of procurement preference laws on Indian business development;
3. Expanding the resources beneficial to tribally and individually-owned Indian companies;
4. Helping to shape public education policies relative to Indian business and economic development; and
5. Promoting the contributions made by Indians in business and citing these to combat negative stereotypes.

The 1989 Summit leaders told us that Indian tribes and businesses require specific assistance in 10 major industry classifications. One critically important area to expand is manufacturing - only 2% of the 15,000 companies owned by American Indians are classified as manufacturing.

A capital and labor intensive industry, manufacturing provides the greatest potential for creating long-term economic self-sufficiency for American Indians.

Facts and Findings

The Wall Street Journal has recently reported that the U.S. is entering a period of labor shortage; our labor supply is not depleted! Rural areas and Indian reservations have high unemployment. Indian reservations are an excellent domestic opportunity to reduce and level manufacturing costs.

While American industry absorbs the extra cost of hunting harder and paying more for entry level positions, they are experiencing high turnover and lower productivity. If the situation worsens, the tightening labor supply will hurt our trade balance as more and more companies go beyond our borders for production work.

American Indian tribes and businesses are prepared and ready to serve as America's next source of economic revitalization contributing to the U.S. economy while solving the economic deprivation of our original inhabitants.

A number of recent legislative developments have created a "window of opportunity" for Indians to participate in the nearly $6 billion that the U.S. Government will purchase from minority business enterprises next year. These opportunities include:

- The potential for incentive payments to government contractors who subcontract with Indian-owned economic enterprises and suppliers under Section 504 of P.L. 100-442, the Indian Finance Act (Amended),
- The opportunity to participate in Department of Defense contracting under their 5% MBE utilization goal, P.L. 99-661; Section 1207(a) of the Defense Authorization Act,
- The potential to enter the Small Business Administration's Minority Small Business and Capital Ownership Development Program (8(a) Program) as a prime contractor/joint venturer under P.L. 100-656 (Sections 207, 505 and 602), and
- The future amendment of the Buy Indian Act to enhance Indian participation in federal procurement - S.321.

Given a consistent public policy initiative, numerous government contracts can be awarded to new and existing Indian enterprises which can significantly impact American Indians as well as America.

These major legislative developments are the result of the fine work of this Committee, its staff, and your constituents during the proceedings of the 100th Congress. However, much more remains to be done in the area of federal procurement that these four of the pieces of legislation begin to address.

We are recommending a comprehensive policy initiative on federal procurement as it relates to American Indians. In the following, we examine each of these incentives and related procurement policies for your review:

Indian Finance Act - Section 504

The provision to compensate federal contractors with an additional 5% of the value of subcontracts to Indians, can go a long way in creating opportunities for start-up reservation enterprises. By compensating American companies for the added costs of making bold moves to retain manufacturing operations on U.S. soil, we will be contributing to the economic development of Indian reservations. Most unfortunately, the agency which can provide the greatest contribution to this effort, the Department of Defense, has no plans to implement this special provision (see DoD letter dated February 10, 1989 - Exhibit 3).

Defense Appropriations Act - P.L. 99-661

Section 1207 of P.L. 99-661 already establishes a 5% contract goal for DoD of $5.5 billion to be awarded to small disadvantaged businesses (including American Indians) in the form of prime or subcontracts. P.L. 99-661 allows two other special provisions for use by DoD.

- 10% evaluation factor added to prices proposed by non- minority firms in most DoD solicitations,
- Financial incentives paid to large businesses which exceed goals for contracting with minority firms.

We recommend that this Select Committee as part of its charge, along with Senator Inouye, in his capacity as Chairman of Defense Appropriations, implement the following:

RECOMMENDATIONS ON PROCUREMENT INCENTIVES

1. Examine DoD's record of prime contracting separately with American Indian tribal enterprises and Indian owned businesses.
2. Review the Defense industry awards to both classifications of Indian firms listed above.
3. Investigate the history and precedence of 10% incentive payments under P.L. 99-661 and instruct DoD to establish a similar process for awarding the 5% incentives under P.L. 100-442.
4. Develop an appropriations line item of $5 million in the Indian Finance Act annually to fund such incentives.
5. Conduct annual reviews of performance of federal agencies on these provisions.
6. Expand procurement technical assistance through establishment of a national project under the Defense Logistics Agency.

SBA Minority Small Business & Capital Ownership Development Program P.L. 100-656

The Small Business Administration Section 8(a) Program permits agencies throughout the government to "set aside" explicitly remove from the normal competitive-bid or negotiated-award process portions of their procurement - which are then offered to individual firms already certified as 8(a) firms by the SBA. Such firms may enter into all types of contracts (including, but not limited to, supply, services, construction, and research and development); they are also eligible to receive technical, managerial, and financial assistance from SBA.

A specific set of rules now apply to concerns owned by Indian tribes, however SBA must improve its record of recruiting and certifying tribal enterprises for the 8(a) Program. SBA must be required to report to Congress on its progress for Indian participation in the program. Additionally, the 8(a) application is a lengthy and difficult process that requires extensive business planning and financial forecasting. This technical assistance is not readily available to Indian tribes.

SBA RECOMMENDATIONS

1. **The BIA should be the only source of "IBE" certification (which means a business must meet "51% Buy Indian" requirements); SBA should seek this certification prior to 8(a) determination.**
2. **Limit financial information to the business' Board of Directors and do not use overall tribal financial statements to determine eligibility. Waiver of sovereign immunity should apply to business assets only.**

3. In the case of joint ventures (JV) with non-Indian management, require divestiture agreements, allow for Indian JV 8(a) applications that expand Indian goods and services availability, capability and capital resources.
4. Buy-Indian rules should apply to 8(a) as a pre-eligibility determination for participation with SBA programs.
5. Tribes should only be required to maintain management control rather than management responsibility, to allow for adequate training periods of tribal members who will become CEO's and COO's later.
6. Use alternative organization methods, such as JVs, at time of application to ensure independence and continuity of management and political leadership while increasing Indian procurement. Due to the limited talent pool, allow for participation of elected officials on the Board of 8(a) concerns.
7. Improvements for SBA/DoD Memorandum of Understanding:
   - The progress cited by DoD is inadequate, SBA must be required to seek and obtain DoD contracts for Indian enterprises.
   - DoD must implement a procurement process to target specific contracts to Indians and to identify products for potential set-aside for Indians.
8. Centralize 8(a) application process nationwide for Indians by:
   - assuming eligibility by virtue of BIA certification,
   - assuming contract support exists in all cases,
   - assigning oversight to the SBA Indian Desk, and
   - providing technical assistance to tribes seeking 8(a) status.

Buy Indian Act

Nationwide there are nearly 15,000 firms owned by American Indians, Alaska Natives and tribes. These companies employ 20,540 persons and have sales of over $646 million. Each is clearly contributing to the American economy and conducting its affairs in an ethical and business like manner. While the recent report of

19 "front" cases is serious, it does not represent an alarming statistic.

"Fronts" are initiated by fraudulent individuals and entities, and must be dealt with by civil and criminal penalties for claiming to be an American Indian Company. "Fronts" are perpetuated by an inadequate procurement process or system of certification and enforcement of preference policies.

The Select Committee has an excellent opportunity to correct present preference law problems to ensure future compliance, and to further enhance federal procurement policies for American Indians, through proper amendment of the Buy-Indian Act, S.321.

It will be critical to adopt a clear definition of an Indian Business Enterprise (IBE) under the Buy Indian Act that conforms to other minority preference programs, such as that contained in the Small Business Act. We recommend the following definition:

> The Business must be at least 51% owned by one or more tribes, American Indians, Native Americans, Alaskan Natives -including Aleuts and Eskimos, who are U.S. Citizen(s) or permanent resident(s). In the case of a publicly-owned business, at least 51% of the stock must be owned by one or more such individuals, and its management and daily operations must be controlled by one or more such individuals. Foreign-owned firms operating in the United States must be excluded from eligibility in the program unless 51% owned by the above defined groups.

Two important factors in the certification process will be determination of Adverse Control and Affiliation.

Adverse control can be exercised by a non-Indian company through control of the IBE's finances, equipment, sources of supplies, bonding, licensing and/or capital (ownership). Full disclosure of this information should be required of all owners, officers and directors of the IBE, thereby defined as affiliation with an IBE. Affiliation disclosures should be required of all owners with a 5% or greater interest in the IBE.

An efficient process would:

- Verify American Indian ownership and management control of the firms in all Government vendor files and establish a single point of contact (agency) within the Government for certification.
- Initiate sanctions including criminal and civil penalties aimed at individuals and firms that falsely certify themselves as American Indian owned.
- Include a termination clause in all future contracts for falsification of IBE status or IBE subcontractor status.

BUY INDIAN ACT RECOMMENDATIONS

1. Have the Act apply to all federal agencies with Indian funding ("for the benefit of") including ANA, BIA, IHS, Bureau of Reclamation, EPA, Army Corps of Engineers, National Park Service, Department of Agriculture, HUD and/or expenditures on federal lands for the benefit of Indians.

2. Delivery and enforcement of the Act should be implemented through a tribal entity such as a Tribal Employment Rights Office (TERO) by having:
    - the tribe act as the certifying agency,
    - the TERO serve as a local review/oversight board, and
    - a periodic review occur during and after a "report of project impacts".

3. Require only 51% ownership by a recognized Indian (and not require a business to be on or near a reservation for all industry classifications). Tribes must be allowed to go where the most feasible economic opportunity exists.

4. Employment requirements should not be a part of certification requirement, but an employment goal should be established for each project, for example.

- Company "Core Crew" must be at least 25% Indian.
- Project related local employment must be at least greater than 60%.

5. Adopt a uniform certification form and application process for certification for all applicable federal agencies and their sub-offices (e.g., BIA and HUD).

6. Where the Act applies, issue all contracts as Indian preference, prior to determination that existing Indian capability does not exist.

7. Incorporate into the Buy Indian Act all "Indian Preference" provisions as contained in Section 7(b) of the Indian Self-Determination and Education Assistance Act.

   a. Assume all contracts are Indian Preference through a three step process:

      - Advertise as Indian only: if less than one Indian business bids, then
      - Require subcontracting to Indians to be at least 25%, and
      - Indian employment preference goal to be established by local tribe/TERO.

   b. All contracts are to be issued to Indians when they are within 10% of the lowest non-Indian bid. When all bids exceed the government's estimate, the government estimate should be revised by negotiation to the lowest bidder.

   c. Oversight committees for boards are not necessary; if the Act is properly amended, discourage their use.

   d. Include independent training and technical assistance to implement new Indian preference policies.

   e. Require the BIA and appropriate agencies to report to Congress annually on the progress of these provisions.

The National Center for American Indian Enterprise Development appreciates this opportunity to speak with you. Together we can strengthen American Indian businesses.

Exhibit 1

STEVEN L.A. STALLINGS

Steven L.A. Stallings is President of the National Center for American Indian Enterprise Development (formerly the United Indian Development Association) headquartered in Los Angeles. The National Center is a nonprofit corporation providing business and economic development assistance to tribes and American Indians. The National Center assisted over 780 businesses and secured $150 million in loans and contracts creating 2,800 jobs for Indians.

Long interested in developing American Indian entrepreneurs, Mr. Stallings formed The UIDA Consulting Group, which does economic research, trains Indian managers and develops joint ventures with private industry. Mr. Stallings has conducted dozens of workshops and seminars. Two of his training texts are used throughout America by Indians learning business planning and management.

Mr. Stallings is listed in Who's Who in Finance and Industry and Who's Who in the West. A member of the San Luiseno Band of California Mission Indians in Rincon, he has a B.S. degree in business administration from California State University, Long Beach, and an M.B.A. degree from the University of Southern California.

Exhibit 2

Summary of Progress
July 1, 1987 - June 30, 1988

UNITED INDIAN DEVELOPMENT ASSOCIATION

1 Overall Goal Attainment

Thru June 30, UIDA was primarily funded through support from the Minority Business Development Agency (MBDA) and Corporate donors. UIDA exceeded all of its goals for the year, this is a 40.5 ROI based on an operating budget of $637,000:

	Goal	**Performance**
Financing Obtained for Indians	$6,176,000	**$10,488,456**
New Contracts Secured for Indians	9,065,000	**15,306,589**
Management Assistance Hours to Indians	5,159	**5,382**
Number of Indian Clients Served	221	**233**

In the '88-'89 fiscal year approximately 65% of UIDA staff time will be devoted to MBDA. The remaining client assistance and goals will have to be met through fundraising, charging fees, etc. The one item that affects this plan is our successful award of a Defense Procurement Technical Assistance (PTA) project to UIDA, this results in one new hire and a reconfiguration of staff.

At year end, our direct solicitation efforts raised $75,440. This included $10,000 gifts from the ARCO Foundation and the United Methodist Church.

2 Sample Success Story

White Mountain Apache Manufacturing Company's inception began a year ago when Tribal Chairman, Reno Johnson, Sr., was offered a partnership effort to develop the Apache Attack Helicopter. President William P. Brown and other executives of the McDonnell Douglas Helicopter were "hooked" on the idea and began to bring it to fruition. Representatives contacted UIDA to act as an intermediary in the new relationship.

The sequence of events leading up to the business opportunity began with several planning meetings between McDonnell Douglas Helicopter Company, the United Indian Development Association (UIDA), and the White Mountain Tribe. UIDA was retained to draft a written business plan for general planning purposes. In this respect UIDA contributed management and technical assistance to the enterprise while the McDonnell Douglas Helicopter Company provided training at its manufacturing facility in Mesa, Arizona. The Whiteriver site allowed for nine tribal members to be hired. The training was needed to "ensure quality of the products" to meet the stringent requirements of the government. The Tribe also hired a retired Air Force Col. as the general manager of the enterprise.

The White Mountain Apache Tribe hosted a grand opening for its newly formed Apache Manufacturing Company on August 23, 1988 in Whiteriver, Arizona. The company has already begun successful production of thermal insulation blankets for the cockpits of the McDonnell Douglas's attack helicopter. The newly formed company has been awarded a contract valued at $250,000 to manufacture the first 28 shipments of thermal blankets. A total of 72 shipments are scheduled per year.

Future plans for the newly formed enterprise also include the production of $200,000 worth of wooden shipping/storage containers per year for McDonnell Douglas. According to President Brown, "Our objective is to help qualify the Apache Manufacturing Company to take on additional work from McDonnell Douglas and other defense industry companies. This is a sound way to help Tribal Chairman Reno Johnson, Sr. achieve his nation's ambitious social and economic objectives."

The Manufacturing effort, the first of its kind for the Tribe, was supported by Senator Dennis DeConcini, D-Ariz., and Representative John Rhodes II, R-Ariz., as a significant step toward the Tribe's goal of increased economic self-sufficiency and growth.

3 Conclusion

The results/benefits to all individuals and tribes assisted by UIDA will increase revenues, provide new and expanded employment, obtain loans and contract procurement. The overall goal is to provide an economic base and in-turn, offer greater self-sufficiency to the tribes and Indian entrepeneurs involved.

Although the overall accomplishments were positive, there continued to be many problems in accomplishing our mission. Many individuals and tribes are not prepared beyond their initial request and are not solely prepared to devote the time required to assist in the preparation of a business plan, feasibility study or financial proposal. There were numerous other problems. For example: the limited Loan Funds; changes in economic priorities and requests; changes in management and tribal leaders; limited equity investments; and the lack of resources to assist Indians to ovecome these barriers.

UIDA and its self-help programs are a proven solution to overcome these problems and barriers.

Exhibit 3

OFFICE OF THE UNDER SECRETARY OF DEFENSE
WASHINGTON, DC 20301

ACQUISITION

RECEIVED
FEB
UNITED INDIAN DEVELOPMENT
ASSOCIATION
EL MONTE, CALIF.

10 FEB 1989

Mr. Steven L.A. Stallings
President, United Indian Development
Association
9650 Flair Drive
Suite 303
El Monte, CA 91731

Dear Mr. ~~Stallings~~ Steve:

It was a pleasure meeting with you last week during your visit to Washington. As requested, I am responding to your recent letter to Deputy Assistant Secretary of Defense Eleanor R. Spector concerning section 504 of the Indian Finance Act.

As you were advised during our recent meeting, the Department of Defense has no plans to implement section 504.

We appreciate your interest in this matter.

Sincerely,

Horace

~~HORACE J. CROUCH~~
Director, Office of Small and
Disadvantaged Business
Utilization

Prepared Remarks for Mr. William P. Brown

President of McDonnell Douglas Helicopter Company,
For Presentation Before
The Senate Select Committee on Indian Affairs,
Washington, D.C. April 14, 1989

Mr. Chairman and members of the Committee. I'm pleased to have the opportunity to tell you one of my favorite stories. It's about the White Mountain Apache Indians of eastern Arizona.

They are a people with special hopes and dreams . . . And they have the DESIRE and the ABILITY to fashion their dreams into reality.

They are the great warrior Apaches feared and RESPECTED for their cleverness, tactics and endurance in the last century.

They are the peace-loving Apaches whose forebearers were awarded Congressional Medals of Honor for scouting the U.S. frontier cavalry to victory in the Wild West.

They always volunteer first to serve our nation in every great conflict.

Historic Fort Apache is just down the road from their mile-high capital of Whiteriver 200 miles east of our company headquarters in Mesa.

They are a proud people with a great tradition.

They are friends of ours. They are co-workers on the large and important AH-64 Apache Attack Helicopter Program. They are a people in transition. They are, through the business venture I will shortly describe for you, on their way to a brighter future.

I think this may become one of your favorite stories too.

Through my testimony today, I hope that our successful experience with the White Mountain Apaches will serve to attract other business opportunities for the tribe.

I also hope to encourage your continued support for development of Native American-owned businesses. And to stimulate other Indian nations to step out on the same course.

The traditions of the Apache Indians and the Army's famed Apache helicopter are blended in the success story I'm about to relate.

Page 4 of 18

Although I felt it was important to speak to the tribe in the Apache tongue at an important event last summer, I will confine my remarks to English today. My Apache phrasing and Jack Benny's violin-playing are notoriously close cousins.

McDonnell Douglas Helicopter Company is the prime contractor for the AH-64 Apache helicopter. We have delivered 450 of the planned 975 Apaches to the U.S. Army and National Guard. We expect to sell another 500 Apaches to allied nations around the world.

Components crafted on the reservation by our White Mountain Apache brothers and sisters will be found in many of these helicopters based in the U.S. and in Germany on the frontiers of freedom.

Page 5 of 18

During the past year McDonnell Douglas has enjoyed a highly satisfactory business alliance with the White Mountain Apache Nation. It all began late in 1987 with a get-acquainted chat between a tribal representative and one of my staff about White Mountain Apache Chairman Reno Johnson's vision for the future.

The vision is this: Provide opportunities so people can earn their own way to a better life . . . ON the reservation and while preserving their rich traditions for generations to come.

It seemed natural that the company building the Apache helicopter should be part of the future of the Apache people. So we began to explore how we might work together towards that vision of a better life.

At the same time, we had two important company objectives in mind:

1. To identify a potentially outstanding new supplier, and. . .

2. To make progress towards achieving the U.S. government goal to award at least 5 percent of our defense related subcontract work to small disadvantaged businesses.

Ironically, there was no manufacturing facility on the Apache reservation when that initial meeting took place, but there WAS a great deal of determination to put one there.

After extensive research, McDonnell Douglas concluded that the tribe was technically and financially capable of performing as a subcontractor.

We then set out to identify work that could be done with only a modest tribal investment in facilities, tooling and training. This work was designed to capitalize on the tribe's craftsmanship and dedication at low risk.

We proposed that they manufacture cockpit thermal insulation blankets for Apache helicopters and wooden pallets and shipping containers for other company products.

Thirty-two thermal blankets of different shapes and sizes go into each Apache helicopter. They are tucked into cockpit walls to ensure that pilots and aircraft avionics function in a comfortable environment.

Page 8 of 18

Initially we offered the tribe a one-year contract to produce thermal blankets for 86 helicopters. Value of this work is a quarter of a million dollars.

We also calculated that pallets and crates to meet our requirements could result in more than one hundred thousand dollars of additional work for the tribe's newly formed Apache Manufacturing Company.

However, success of the tribe's first-ever manufacturing effort was never guaranteed.

Even a billion-dollar company like ours cannot ensure the success of someone else's enterprise. But we committed to do all we could to optimize the tribe's chances for success.

Good communications fueled our progress. We talked and met frequently for months. They visited our California facility to see how McDonnell Douglas handles the work for which they would bid.

We visited an abandoned bowling alley on main street in the capitol city of Whiteriver . . . and felt it could house the work.

Our people responsible for procurement, manufacturing, facilities, training and quality met with tribal leaders and their representatives responsible for economic development, job training and construction.

Both delegations were enthusiastic and vowed to make it work. The National Center for American Indian Enterprise Development (formerly UIDA) played an important supporting role.

The Tribal Council voted unanimously to take on the challenge. . . and to establish the Apache Manufacturing Company. AMCO for short.

The council earmarked fifty thousand dollars to renovate the former bowling alley to a manufacturing configuration and for equipment acquisition.

McDonnell Douglas agreed to invest by providing:

1. Advanced payments

2. Kitted materials for making the first blankets.

3. Tooling, primarily templates

4. Extensive training, and. . .

5. A quality system that would meet DOD MIL-I-45208 quality requirements.

McDonnell Douglas provided each of the first nine AMCO employees with 120 hours of training at our plant and in Whiteriver.

Indian workers took courses designed to help them make products that meet stringent military inspection criteria. They also learned about precision layout, cutting, marking, sewing, blueprint reading, safety and quality control.

AMCO's managers were given training in bid preparation, price analysis and marketing.

Then with all the groundwork carefully laid, the new enterprise was publicly launched in August 1988.

Hundreds of tribal members, McDonnell Douglas employees and VIPs gathered in the newly renovated manufacturing plant to celebrate the grand opening of the Apache Manufacturing Company.

Today, AMCO is delivering products which far exceed our initial expectations. You couldn't ask for more.

Our White Mountain Apache brothers and sisters are helping set the stage for AMCO's growth by doing a superb job for McDonnell Douglas, the U.S. Army and the American taxpayer.

Our Apache workers are enthusiastic, technically sharp, committed to quality and take tremendous pride in their work.

They have completed cockpit insulation for over 40 Apache helicopters. That's about half of the first year's work. A second contract for equipping 52 more aircraft is in the offing. AMCO also is manufacturing fabric covers for aircraft pitot tubes.

In March, they launched production of 250 wooden pallets for use in our warehouse, and crates for shipping 25mm automatic cannons for installation on the Army's Bradley Fighting Vehicle and Navy ships.

All of the products are of the highest quality. Their prices are reasonable, and deliveries are on-time or ahead of schedule.

During the months that the Apache Manufacturing Co. has been in business, the employees have maintained a steady dialogue with their McDonnell Douglas counterparts. Because they want everything to be perfect, they ask many questions. They are committed to providing products that they can proudly sign with the Apache name.

AMCO has grown since production began in August. Employment has increased from the original nine workers to 15.

The early success has brought the tribe closer to realizing Chairman Johnson's vision for a better tomorrow for the White Mountain Apache Nation. But the benefits to our company are also significant.

We have thousands of suppliers, but there are very few with AMCO's dedication to customer service.

The quality of their products demonstrates tremendous pride in workmanship. . . deep gratitude for the opportunity to work meaningfully. . . and dedication to continuing this important employment base on the reservation.

Further expansion is a good possibility and there are hundreds of talented White Mountain Apache people eager to join the company.

All in all, AMCO has proven to be a model supplier. This has led McDonnell Douglas to actively seek expansion of its business with minority-owned firms, especially those located on reservations.

Much work lies ahead before AMCO can have a fundamental impact on the economy of the White Mountain Apache Nation. Widespread unemployment and low annual incomes must be attacked from a broader business base. Tribal leaders and AMCO's management are doing something about this.

They are developing contacts with other companies to gauge the opportunities. Their visionaries are developing new products to market. Future work could include ties with other aerospace companies, other Native American-owned businesses, commercial companies and the U.S. Government.

McDonnell Douglas Helicopter Company will continue to be available for guidance. However, our role as a major participant in this success story will diminish as AMCO grows larger and stronger. In fact, AMCO's most important objective from here on out is to strive for independence.

When the next recounting of outstanding accomplishments by the Apache people is written, there may well be a chapter on the Apache Manufacturing Company.

And, if Apache helicopters are ever called upon to fight in anger, credit for their victories will belong in part to our Apache friends in Arizona.

We're very proud of our productive fellowship with Native Americans. And we felt especially honored recently to receive The National Center for American Indian Enterprise Development's 1989 Corporate Citizen Award.

It is given "in recognition of an outstanding private contribution to American Indian economic progress and for development of business opportunities for American Indians."

Thank you, Mr. Chairman and members of the Committee for the opportunity to talk about a subject so important to McDonnell Douglas and Native American peoples throughout our land. Now I would be glad to answer any questions you may have.

rwm 4.7.89

Testimony

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

HEARINGS ON INDIAN ECONOMIC DEVELOPMENT

APRIL 14, 1989

, SUBMITTED BY DANIEL S. PRESS

ON BEHALF OF

THE COUNCIL FOR TRIBAL EMPLOYMENT RIGHTS,
LAGUNA INDUSTRIES, INC. AND
THE NATIVE AMERICAN INDUSTRIAL ASSOCIATION

I appreciate the opportunity to present testimony to the Committee on this vital issue. My name is Daniel S. Press. I am a partner in the Washington office of the law firm of Heron, Burchette, Ruckert and Rothwell and am submitting this testimony today on behalf of two clients, the Council for Tribal Empoyment Rights (the national TERO organization) and Laguna Industries, Inc. These two organizations testified before this Committee last year on the need for legislation that would permit tribes to tap the needed technical and management expertise that exists among the nation's large defense contractors while still being eligible to tap the benefits of the various minority set-aside programs. Thanks to the strong advocacy of this Committee, the 1988 Business Opportunity Development Reform Act (P.L. 100-656) enacted by Congress last Fall contained provisions that permit joint ventures between tribal companies enrolled in SBA's 8(a) program and large defense contractors to be eligible for a limited number of 8(a) contracts. For the first time the large defense contractors can take an equity position in a joint venture with a tribal company that is receiving 8(a) contracts. This, we believe opens an exciting new mechanism to promote increased Indian participation in defense contracting. For existing tribal 8(a) firms such as Laguna, a joint venture will enable them, with the help of a joint venture partner to engage in more sophisticated work. For tribes that presently have no defense activity on their reservations, the new legislation gives the defense contractors a bottom line incentive to assist tribes establish defense related industries since the tribal company will then be able to joint venture with the company that assisted it, to the financial benefit of both companies. Attached as Exhibit A is an analysis of the opportunities presented by the new legislation.

With this new 8(a) legislation, coupled with the 5% incentive payment contained in the Indian Finance Act reauthorization and the opportunities made available by the Defense Department's new Small and Disadvantaged Business (SDB) program, there is now an extensive range of legal tools available to promote Indian participation in defense contracting.

I believe the focus now needs to be on helping the various participants to make maximum use of these tools. The four major participants are the tribes, the Small Business Administration (SBA), the Department of Defense (DoD) and the defense contractors. I believe this Committee can and must play a key role in this next stage. I would like to discuss briefly the assistance you can provide in this regard.

The tribes have initiated a number of steps, with your encouragement, to be better prepared to tap these new opportunities. The new National Center for Indian Economic Development can provide technical assistance and contacts with the defense industry. The Council for Tribal Employment Rights assists tribes to develop the governmental infrastructure necessary for econmic development, such as helping them adopt business codes that provide a legal framework for economic development. Just several months ago, a new Indian organization, the Native American Industrial Association, was created. It is composed of tribes that have successfully established industries on their reservations, including Laguna, Ft. Peck and Cherokee. The objectives of this organization are joint marketing of their capabilities to the large corporations, advocacy, and sharing of the lessons they learned from their start-up experiences with tribes that are or soon will be starting businesses. With this range of services and skills available, I believe the Indian community is well situated to tap the new benefits.

The second group of participants are the large defense contractors. This Committee has already begun to use its contacts with the defense contractor community to make them aware of the benefits tribes and the contractors can obtain by tapping these new tools. Because few tribes have access to the defense contractor network, the continued assistance from this Committee is essential.

It is with SBA and DOD where the most work needs to be done and where this Committee can have the most signficant impact. The relationship between SBA and Indian tribes has never been a strong one. Tribes have reported having difficult experiences with SBA in the past, in a large part because SBA has had little experience with or expertise on the unique status of Indian tribes. SBA is accustomed to working with individually owned private companies, not governmental entities such as tribal corporations. Nor are most SBA offices familiar with the unique legal structure and principles that surround tribal government. This Committee can play a key role in helping to bridge the gap between tribes and SBA. First, the Report language to the 1988 Reform Act included a requirement that SBA establish an Indian desk in Headquarters and each regional office in Indian country, with the authority and responsibility to process Indian 8(a) applications. The Committee is urged to work with SBA to ensure these new positions are filled quickly and with capable persons.

The 1988 Reform Act also gave SBA a clear signal that Congress wants tribes to become signficant participants in the 8(a) program despite the fact that they are different from the typical 8(a) participant. To go even further, tribal participation in 8(a) is now the center of Congress' effort to increase Indian participation in defense contracting. This Committee is urged to develop a working relationship with SBA and to encourage it to develop close ties to the various Indian organizations that represent Indian businesses. In sum, this Committee needs to use the various means at its disposal to assist and encourage SBA to develop the capability and interest commensurate with the responsibility for Indian economic development Congress has given that agency.

The final actor is the Department of Defense. As with SBA, tribes have little familiarity with DoD and thus difficulty accessing it for purposes of economic development. Their single biggest problem has been that of identifying a product the tribal industry could make that DoD buys. Even when in a joint venture with an experienced defense contractor, tribes have enourmous difficulty locating a product that DoD buys in large quantities and that can be done with the level of skills and technical resources available to the tribe. Presently if one goes to DOD seeking help in identifying a product one usually is handed a book that list the 30,000 or 40,000 items DoD purchases, -- not a particularly directed source of information.

I suggest that the Committee, in conjunction with the Armed Sevices Committee and the Defense Appropriations subcommittee persuade DoD to establish the following arrangement with tribes. If a tribe comes in without having done any homework and says we want to make a DoD product, one can understand how difficult it would be for DoD to respond constructively. However, if a tribes and/or joint venture submits to DoD an in-depth profile describing the kinds of skills available, the location, the kinds of technical capability, the kind of facility, and other pertinent parameters, that DoD agree to circulate the document throughout its procurement system and produce a list of six to ten products that the tribe could produce and that DoD purchases in sufficient volume to sustain the company's business at least in the short run. My experience has been that many DoD contracting officers and Small and Disadvantaged Business Utilization Specialists (SADBUS) keep a list in thier minds of products in which there is little minority participation and that can fall at the lower end of the technological spectrum -- where most tribal businesses will be at the beginning. Such a service will immeasurably increase the pace at which tribal defense industries will emerge.

Help is also needed for Indian firms that are interested in becoming subcontractors to defense contractors. I would like to bring to the Committee's attention an approach that has proven sucessful in increasing minority defense subcontracting and which should be implemented for Indians. In order to narrow down the huge defense contracting world minority subcontractors face, the Navy and the Latin American Manufacturers Association (LAMA) entered into a contract to promote minority subcontracting on a single major procurement -- the C-17 aircraft. With a list of the various subcontracting needs for that one weapon system, LAMA goes out and locates minority subcontractors that can meet those various needs. The project is large enough to offer significant opportunities while small enough to permit a focused search for minority subcontractors. I urge the Congress to identify a similar large procurement and encourage DoD to contract with an Indian organization to play the same role as LAMA is playing on the C-17.

To summarize, by assisting and encouraging DoD and SBA to position themselves to be effective participants, this Committee can ensure that the legal tools they have put in place to promote increased Indian participation in defense contracting will be used productively. Thank you for this opportunity to present testimony to you.

Heron, Burchette, Ruckert & Rothwell

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ANALYSIS OF TRIBAL 8(a) JOINT VENTURE PROVISION IN 1988 8(a) REFORM ACT

Congress recently amended the SBA Small and Minority-owned Business Program, commonly known as the 8(a) program. One part of this new law provides some unique opportunities to 8(a) companies owned and operated by tribes. In particular, they provide the opportunity for beneficial and profitable joint ventures between tribal 8(a) companies and large businesses.

Under the normal 8(a) program, an 8(a) certified company can joint venture with a non-8(a) business, but only if that other business is classified as a small business pursuant to SBA criteria. Under the new provisions a tribally-owned 8(a) can joint venture with a non-small company (e.g., a Fortune 500 Company) and that joint venture can receive up to two negotiated sole source federal contracts. (There is no dollar limit on the amount of each contract.) The only other conditions are that the tribal company must own 51% of the joint venture, the activity must be located on a reservation, and at least 50% of the workforce must be members of the tribe.

This legislation opens up new opportunities for tribal economic development. It can help tribes set up new tribally-owned companies and can help existing tribally-owned companies to expand and diversify.

1. Tribes that have no existing industry.

The provision gives large companies a significant financial incentive to help a tribe develop a manufacturing company that makes a product the government purchases. For example, a large defense contractor (XYZ Company) can help a tribe develop a wire harness assembly plant, using XYZ technical, managerial and financial resources. Once that tribal company receives 8(a) certification, a joint venture between XYZ and this new tribal company can obtain two sole-source wire harness contracts from the Defense Department under the 8(a) authority. Since each contract can be for millions of dollars and run for several years, and since XYZ company will be receiving 49% of the profits, XYZ can more than recoup its costs in helping the tribal company get off the ground. At the end of the second contract the joint venture will terminate and the tribal company will have to seek 8(a) contracts on its own. But during the time it was in the joint venture, it had the opportunity to develop its managerial and technical capability at a measured pace under the guidance of XYZ. It also should be in a strong financial position. Thus, when it is finally required to fly on its own, the tribal company should be in a much stronger position to succeed than a company that had to start from scratch on its own. XYZ can maintain its involvement by entering into a management consulting contract with the tribal company.

This joint venture provision, then, enables the tribe and the large company to benefit substantially. The tribe gets the assistance of a large company that has a direct financial incentive to make the tribal enterprise successful. The large company gets 49% of the profits during the joint venture period and the financial benefits of the management consulting contract after that period expires.

There is one other major benefit to XYZ. DoD recently imposed a strict requirement that no less than 5% of all subcontracts awarded by a defense contractor must go to small and disadvantaged businesses (SDBs). A defense contractor that fails to meet this percentage is subject to monetary penalties, while one that exceeds the goal will receive financial bonuses from DoD. Many large defense contractors are having difficulty meeting the 5% requirement due to difficulty in locating sufficient SDBs that meet their performance standards or that can do the more technically sophisticated work that constitutes the bulk of most defense contracts. Under the new tribal joint venture provision, XYZ can help prepare the tribal company to be a subcontractor to it. While XYZ can always help any company to become a subcontractor, the tribal joint venture agreement enables XYZ to receive 49% of the profits of the company it is assisting. Since XYZ helps set up the tribal company and trains the managers, it can ensure that the tribal company has the performance standards.

2. Where the tribe has an existing company.

The joint venture provision enables existing tribal companies to grow and develop new capabilities. Assume a tribal company does wire harness assembly but lacks the technical expertise to do more sophisticated work. Under the new provision it can obtain 8(a) certification (or use its existing 8(a) status if it has it) and then joint venture with a large company. Using the large company's technical expertise, the joint venture can obtain 8(a) contracts in sophisticated areas that the tribal company would have been unable to qualify for on its own. At the end of the two contracts permitted under the joint venture provision, the tribal company should have developed the technical expertise in the new areas to be able to go after a whole new level of sophisticated work, both as a prime and as a subcontractor.

The new provision becomes effective on June 1, 1989 and expires on September 30, 1991. Unless extended by Congress, this means that no contract may be awarded to a tribal joint venture after September 30, 1991. Because there is only this 3-year window tribes and large companies should begin work immediately to develop their relationships to be able to tap the opportunities that become available on that date.

The Act also provided a number of other benefits for tribes. Section 602(a) of H. R. 1807 provides that the competitive thresholds required by the legislation do not apply to tribally-owned companies. Section 602(d) modifies the "once-in-a-lifetime" rule to allow tribes to own more than one 8(a) company as long as the companies are not in the same industry. It also permits managers of such companies to manage up to two tribally-owned 8(a) companies. The legislative history accompanying H. R. 1807 clarifies that managers of tribally-owned 8(a) companies remain eligible for individual participation in the 8(a) program. It also directs the SBA to establish an Indian Desk or reference persons in districts having significant Indian populations.

(4) The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(5) The Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request. In addition, the Administrator shall, as appropriate, provide to the Commission, upon request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

(f) TERMINATION.—The Commission shall cease to exist on the date that it transmits its final report to the Congress and to the President.

(g) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until the Commission is terminated. New spending authority or authority to enter contracts as authorized in the section shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

(h) REPEALS.—Subparagraph (A) of section 7(j)(3) of the Small Business Act (15 U.S.C. 636(j)(3)(A)) is repealed.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

SEC. 601. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m) of the Small Business Act (15 U.S.C. 644(m)) is amended to read as follows:

"(m)(1) Each agency subject to the requirements of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note) shall, when implementing such requirements—

"(A) establish policies and procedure that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

"(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

"(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

"(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

"(B) report to their immediate supervisors all instances of noncompliance with such requirement; and

"(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1207 of the National Defense Authorization Act of Fiscal Year 1987 (10 U.S.C. 2301 note)."

SEC. 602. INDIAN TRIBE EXEMPTIONS.

(a) COMPETITIVE THRESHOLDS.—Section 8(a)(16) of the Small Business Act as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)).

(b) JOINT VENTURES.—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)); and

(2) such Program Participant:

(A) owns 51 percentum or more of such joint venture;

(B) is located on the reservation of such tribe;

(C) performs most of its activities on such reservation; and

(D) employs members of such tribes for at least 50 percentum of its total workforce.

(c) LIMITATIONS.—A Program Participant, as a party to a joint venture shall receive more than two contracts due solely to the provisions of subsection (b).

(d) ELIGIBILITY OF MORE THAN ONE CONCERN.—The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this section 7(j)(10) and section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)) if—

(1) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(2) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(e) SUNSET.—Subsection (b) shall cease to be effective after September 30, 1991.

SEC. 603. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.

Section 15(k) of the Small Business Act is amended by—

(1) amending paragraph (3) to read as follows:

"(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary's designee;";

(2) striking "and" at the end of paragraph (7);

(3) striking the period at the end of paragraph (8) and inserting in lieu thereof ", and"; and

(4) adding at the end thereof the following new paragraph:

"(9) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), or section 8(a) of this Act or section 1207 of Public Law 99-661. Such recommendations shall be made with due regard to the requirements of subsection (m),

contracts to support another firm in the particular industry in the SBA portfolio. This stage is commonly referred to as the "1017" process, after the SBA form that the applicant submits. The 1017 is processed on a national and regional basis. If SBA determines that the applicant is in an industry for which there are already too many firms or for which there is not sufficient work to support the firms already in the portfolio, the SBA will defer the consideration of a complete application. The committee has frequently heard from firms which were denied certification because of a "lack of contract support."

The 1017 process as a means of determining whether there are Federal contracting opportunities is somewhat arbitrary and may not accurately reflect the Federal marketplace. By considering only past contracting opportunities offered for the program, the process fails to take into account new emerging areas of federal contracting. Frequently, firms have been told by procuring agencies that work would be available for them if they received 8(a) certification, only to be told by SBA that they cannot be certified due to a lack of contract support. Further, the process appears to be based on the faulty notion that SBA will provide firms with the necessary contract support once they are certified. Experience, however, has shown that the program works most effectively for those firms that market contract opportunities themselves. Under Section 401 of the bill the Committee recognizes the significance of self-marketing.

The bill provides that SBA shall decide applications for the program within 90 days of receiving a completed application. In order to meet this expedited certification process, it will be necessary for SBA to streamline and eliminate some aspects of the current process. The Committee suggests that SBA reconsider the "1017" process. Under the newly expedited process, firms should not be summarily dismissed by the arbitrary reasoning that there is not adequate contract support, and the Kerry amendment prohibits this. The amendment was adopted without objection.

Boren amendment

Senator David Boren offered an amendment to clarify the eligibility of Native American tribally owned businesses for the 8(a) program. Specifically, the amendment would allow Indian tribally owned business to have more than one firm certified for the program provided that (1) the firms are not in the same industry and (2) the manager of the tribally owned business does not operate any more than two certified firms. The Committee is aware of the successes of certain tribal businesses in promoting economic development in particularly depressed areas. The Boren amendment will make more such opportunities available by repealing the so-called "once in a lifetime" rule for 8(a) participation as it applies to tribally owned business. Further, management of a tribally owned firm by an individual Native American does not preclude that individual from later applying for certification as a socially and economically disadvantaged individual as owner of a particular privately owned business.

Further, SBA is directed to establish an Indian Desk or reference person in those districts and regions having significant Native American populations. This designated SBA employee should actively assist both tribal businesses and individual Indians in availing themselves of all SBA programs by providing outreach to Indian communities.

The Boren amendment was accepted without objection.

Dixon amendments

Senator Dixon offered an amendment to preserve existing competitions among 8(a) contractors that result in split or multiple awards.

The Department of the Navy and the Small Business Administration working jointly in order to assure multiple sources, steady production, reduction in contract pricing, and in response to the 1985 Department of Defense Authorization Act Conference report, developed a competitive contracting program within the 8(a) program.

Because the competition among 8(a) firms introduced by the Navy has been successful in achieving its intended objectives, no change in this form of competition is warranted. Agencies using a form of competition prior to this Act should be permitted to continue that competition so long as the products and services produced thereunder continue to be needed. The Dixon amendment was accepted.

Senator Dixon also offered an amendment to strike language in the bill requiring Federal agencies, on each contract requiring a subcontracting plan under Section 8(d) of the Small Business Act, to include a contractual provision requiring large prime contractors to pay liquidated damages in the event the prime does not make good faith efforts to meet the goals of the plan. After concern was expressed by Senator Weicker, Senator Dixon withdrew the amendment and offered an alternative providing that determination of the contractor's liability under the provision would be subject to a hearing under the disputes resolution provision of the Federal Acquisition Regulation. At the Chairman's request, Senator Dixon withdrew this amendment and agreed to pursue the issue by amendment when the bill is considered on the Senate floor, while staff was instructed to attempt to resolve the issue by compromise.

Finally, Senator Dixon offered an amendment to establish the Small Business Competitiveness Demonstration Program, which is the product of two days of hearings which Senator Dixon has chaired on S. 1559, a bill he had introduced with Senators Bumpers and Weicker on July 28, 1987. This bill and subsequent drafts which were circulated for comment to both industry and federal agencies, represent the Committee's response to a twofold and nettlesome problem in federal procurement from small business in certain industries.

The complaint has been long-standing that a disproportionately large number of contracts are reserved for small business competition (the so-called small business set-asides) in certain industries, particularly construction and architecture and engineering services (A&E services). This complaint comes from both large firms in these industries who feel shut out from many opportunities and bursed for expenses, but shall serve without pay. The Chairman is authorized to appoint an executive director and four other staff.

Title VI—Administrative and Technical Amendments

SEC. 601. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS

The House bill would amend Section 15(m) of the Small Business Act to require the Department of Defense to establish policies and procedures to insure against reductions in small business set-asides and 8(a) contracts when implementing Section 1207. Procurement center representatives would also be required to monitor compliance with this provision, report non-compliance, and work toward increasing the percentages and dollar value of contracts for each program.

Under the House provision, a firm participating in the Section 1207 program would be permitted to exceed its size standard by up to 25 percent for an award under the program.

The Senate amendment contained a similar provision except it would not allow small disadvantaged businesses participating in the Section 1207 program to exceed SBA size standards otherwise applicable to small business.

The conference substitute contains the Senate provision. The conferees intend that implementation of Section 1207 not adversely affect long-standing programs such as Section 8(a) or Section 15 small business set-asides. The provision for a 125% waiver of the size standard, however, was deleted in favor of other provisons of this Act allowing an extension of time in the 8(a) program for current participants.

SEC. 602. INDIAN TRIBE EXEMPTION

The House bill contained a provision exempting concerns owned by socially and economically disadvantaged Indian tribes from the requirement that contracts above a certain dollar value be solicited through competition among 8(a) firms.

The Senate amendment did not provide the exemption of tribally owned businesses from program competition, but contained a provision repealing the so-called "once in a lifetime" rule with respect to tribally owned business. Thus, an Indian tribe might operate more than one 8(a) concern so long as it is not in the same industry and the individuals controlling the firms do not manage more than two such concerns.

The conference substitute provides for the Senate to recede to the House with respect to the exemption of tribally owned businesses from the requirement for competition among 8(a) firms. The House recedes to the Senate with respect to repeal of the "once in a lifetime" rule.

Further, the conference agreement authorizes 8(a) contracts to be awarded to joint ventures between qualified tribally owned businesses and large businesses. The conferees, while going to great lengths to improve economic opportunities for Native Americans who continue to suffer extraordinarily high unemployment and poverty levels, remain concerned that sole-source contracting not be used for the benefit of non-disadvantaged business. Thus, the

substitute contains tight controls on such joint ventures designed to ensure that the benefits of such contracts flow primarily to members of Indian tribes residing on reservations.

SEC. 603. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION (SADBU)

The House bill would amend Section 15(k) of the Small Business Act to allow the Small and Disadvantaged Business Utilization officers to make recommendations to contracting officers regarding whether a contract should be awarded as a small business set-aside, an 8(a) contract, or a Section 1207 award. Failure of the contracting officer to follow the recommendation must be documented. All SADBU's are to report to the head of the agency or to the deputy of such agency head.

The Senate amendment contained no similar provision.

The Senate recedes to the House with an amendment requiring the Department of Defense Small and Disadvantaged Business Utilization officer to report directly to the Secretary of Defense or the designee of the Secretary.

Title VII—Small Business Competitiveness Demonstration Program

Part A—Short Title and Findings

SEC. 701. SHORT TITLE

The Senate Amendment contained a provision establishing the citation of Title VII as the "Small Business Competitiveness Demonstration Program Act of 1988".

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision.

SEC. 702. FINDINGS

The Senate Amendment contained a provision enunciating a series of Congressional findings relating to the participation of small business concerns in the Federal procurement process. It recognized that small business concerns have repeatedly demonstrated their ability to provide through effective contract performance, a broad range of the products and services (including research, development, technical and professional services, and construction) required by all agencies of Government. The central Congressional finding is that traditional agency efforts to assure small business participation in a fair proportion of Federal procurements, as required by the Small Business Act, have resulted in a concentration of contract awards in a limited number of industry categories, naturally dominated by small business concerns, through the use of set-asides. While this has helped assure attainment of the agency's overall small business contracting goals, it also resulted in inadequate efforts to expand small business participation in agency procurements which have historically demonstrated low rates of small business participation, but for which there is substantial potential for expended small business participation.

The House did not contain a similar provision.

PREPARED STATEMENT OF RAY GOETTING, CHAIRMAN, OF THE BOARD OF DIRECTORS, LAGUNA INDUSTRIES, LAGUNA, NM

A. Need for Reservation Industry

During 1980 the Pueblo of Laguna was faced with the closing of the Jackpile Uranium mine being administered by Anaconda, a subsidiary of ARCO. This was of particular concern to tribal officials as 80% of the employees were the head of their household, and 52% of the employees provided the only source of income for their household. The Pueblo of Laguna approached Raytheon Service Company at a 1980 Tribal Convention sponsored by Federal Agencies to seek industrial development opportunities on the reservation. With financial assistance provided by ARCO, the Pueblo of Laguna and Raytheon Service Company began exploring potential needed capabilities and operational activities within the DoD. Support was concurrently being developed with top DoD officials and congressional representatives. The first attempt at identifying potential business areas concentrated on establishing a Depot Overhaul Point (DOP). This was subsequently modified to establish a manufacturing facility to provide DoD required hardware.

B. Corporation Establishment

The Pueblo of Laguna established a 100% tribally-owned company called Laguna Industries, Inc. (LII) organized to do business under the laws of the State of New Mexico.

LII was authorized by Laguna Tribal Council resolution to conduct business as a separate entity and not as a tribal government unit, with an elected Board of Directors vested with the responsibility and authority to do business as any other privately held corporation.

The reason for incorporating under the laws of the State of New Mexico was twofold. The first reason being that the SBA was unfamiliar with contracting with tribally owned businesses versus individually owned businesses in the 8(a) program. The corporation was developed as a "for profit" business which waived any sovereign immunity by the Pueblo in matters directly relating to LII. This was implemented in attempt to alleiviate any concerns the DoD or major prime contractors may have expressed in dealing with tribally owned businesses. Secondly, the Board of Directors, and not the Tribal Council, ran the day to day business affairs of the corporation. This has precluded any attempts of Governmental or Tribal politics to influence operational decisions. It is the corporation's responsibility to provide an "Annual Stockholders Report" to the Tribal Council, as any corporate charter does. LII welcomes any inquiries from tribal members or council members concerning the corporation and its' activities; provided these inquires are coordinated through the Board of Directors. This has worked satisfactorily for all parties concerned and alleviates daily or irregular interference that would be detrimental to the business.

C. Small Business Administration, 8(a) Certification

Language was placed in the 1982 Defense Appropriation Bill which provided that Indian owned companies be considered for minority set-aside contracts by the DoD. The intent was to apply the 1910 Buy Indian Act which gives preferential contract consideration to 100% Indian owned companies through contracts issued by DoD for products and services. Since the Act would be a new application within the DoD, the DoD felt that Indian owned companies should comply with guidelines already existing in the SBA's 8(a) program. A Memorandum of Understanding (MOU) was executed in September 1983 between the SBA and the DoD "to increase the opportunity for Indians to benefit from existing programs by providing information to Indians about techniques for doing business with the DoD." The SBA would provide to Indian firms; business opportunties, management, technical and financial assistance currently available to all firms in the SBA's 8(a) program. The SBA would also target 75 business plan applications from tribally owned

FIRMS AND INDIVIDUAL INDIAN OWNED BUSINESS FOR 8(A) PROGRAM ENTRANCE. THE DOD WAS TO PROVIDE CONTRACT SUPPORT TO THE SBA FOR THE SBA TO SUBCONTRACT TO THESE 75 FIRMS. DOD WAS ALSO TO "ENCOURAGE MAJOR PRIME CONTRACTORS TO CONSIDER INDIAN BUSINESS AS AN ELEMENT OF THEIR SUBCONTRACT PLANS AND WILL ENCOURAGE THEM TO CONSIDER THE POTENTIAL FOR COOPERATIVE BUSINESS ARRANGEMENTS THAT WOULD COMBINE THE MANAGEMENT AND TECHNICAL EXPERTISE OF THEIR FIRMS WITH INDIAN TRIBES AND/OR BUSINESSES."

D. RESOURCES (PERSONNEL, FACILITIES, FINANCIAL)

THE PUEBLO OF LAGUNA CONDUCTED A SKILLS INVENTORY SURVEY TO ASSESS THE QUANTITY AND QUALITY OF THE AVAILABLE WORK FORCE. FROM THESE RETURNS, 827 INDIVIDUALS WERE THEN INTERVIEWED PERSONALLY AND CATAGORIZED BY MAJOR CLASSIFICATIONS OF WORK SKILLS. THE PUEBLO FOUND POSITIVE RESULTS. THEY INCLUDED: (1) A SKILLED LABOR FORCE OF 200 IN ELECTRONIC ASSEMBLY, (2) AN ADDITIONAL LABOR FORCE OF 300 WITH SKILLS IN MECHANICAL, HEAVY EQUIPMENT REPAIR, AND VARIED MINING AND LABOR INTENSIVE SKILLS. MANY OF THESE SKILLS HAD BEEN GAINED FROM THE DIFFERENT M.O.S.'S ATTAINED BY THE PUEBLO MEMBERS WHO HAD SERVED IN THE DIFFERENT ARMED SERVICE BRANCHES. OTHER SKILLS INCLUDING MANAGEMENT AND PROFESSIONAL EXPERTISE

HAD BEEN ATTAINED BY OPERATING THE ANACONDA MINE AT THE PUEBLO OF LAGUNA. THIS WAS AT THE TIME THE LARGEST OPEN PIT URANIUM MINE IN THE WORLD.

THE PUEBLO ALSO IDENTIFIED AN EXISTING BUILDING THAT AT ONE TIME HOUSED AN ELECTRONICS FIRM, BUT WAS NOW VACANT. WITH SOME RENOVATIONS, IT WAS UPDATED TO MEET THE CRITERIA OF A MODERN MANUFACTURING FACILITY. THE FACILITY WAS IN CLOSE PROXIMITY TO MAJOR TRANSPORTATION THOROUGHFARES SUCH AS; 100 YARDS FROM INTERSTATE 40, ONE MILE FROM THE SANTA FE RAILROAD SPUR, AND A 40 MINUTE DRIVE FROM ALBUQUERQUE, NEW MEXICO.

FINANCIAL RESOURCES WERE SECURED BY LII FROM THE LAGUNA TRIBAL GOVERNMENT MONIES, THROUGH BOTH GRANTS AND LOANS WHICH WERE PROVIDED TO THE CORPORATION. ADDITIONALLY THE PUEBLO AND LII OBTAINED FINANCIAL ASSISTANCE FROM THE ADMINISTRATION FOR NATIVE AMERICANS AND THE BUREAU OF INDIAN AFFAIRS. THESE FINANCIAL RESOURCES PROVIDED THE INITIAL INVESTMENT FOR LII TO UPGRADE THEIR EXISTING FACILITY, CONDUCT A SKILLS INVENTORY, AND OBTAIN SOME MARKETING, AND MANAGEMENT AND TECHNICAL ASSISTANCE FROM A FORTUNE 500 COMPANY, RAYTHEON, WHO HAD EXPERTISE IN THE DoD CONTRACTING ARENA.

E. MANAGEMENT, SUPPORT, TRAINING AND SPECIALIZED TECHNICAL ASSISTANCE

LII issued a subcontract to Raytheon Service Company for management support, training and specialized technical assistance. The associated costs were committed and paid for by the tribe. An outline of some of the services Raytheon provided in developing a Management Plan are as follows: (1) Market Research; (2) Marketing Plan, (3) Manufacturing and Operations; (4) Preproduction Plan; (5) Production Planning/Support Utilization; (6) Production Plan; (7) Production Processes; (8) Standard Operating Procedures; (8) Training Program; (9) Facilities Overview; (10) Financial Analysis; and (11) Financial Projections. What Raytheon was able to do by committing dedicated personnel (on-site) to this project was to combine theoretical knowledge along with practical experience, and to pass this on to tribal members in order to establish a successful defense contractor buisness entity. Product identification which matched skills, experience, facilities, longevity, etc., was of utmost importance in the management assistance program. What actively occurred was a "transfer of knowlege" from Raytheon personnel to Laguna personnel over a predetermined time frame.

F. Proven Success

LII could be used as an example on how the Government, private industry, and tribal enterprises can work collectively together for mutually beneficial results. Everyone involved in this endeavor has gained great satisfaction and pride being involved in this success story. No one faction should attempt this alone. Today LII employs over 230 full time people, has contracts extending through 1991, and contract sales average over $13 million annually. Over 90% of the employees are Native American and the turnover rate is less than 3%. The "American Dream" has been opened up to our first " Native Americans."

G. New Opportunities

The "Business Opportunity Development Reform Act of 1988" (P.L. 100-656) enacted November 15, 1988 has widened opportunities for Tribally owned businesses. Recognizing that tribal ownership is significantly different from ownership from other disadvantaged individuals, Congress has implemented certain provisions unique to Tribally owned concerns. First and foremost is the opportunity for joint ventures between tribal 8(a) concerns and large businesses. This will provide new opportunities for tribal economic development and corporate involvement.

Large companies will now have an incentive to assist in developing tribal enterprises, if they can reap some financial benefits over time. A recommendation would be to let the prime contractors who assist tribal enterprises count the contract dollar value attained for these enterprises as part of their 5% goal as detailed in P.L. 99-661. Another incentive for prime contractors would be to utilize section 504 of P.L. 100-442 of the "Indian Finance Act of 1974, Amendment" which provides these primes with compensation equal to 5% for subcontracting with Tribally owned firms. Finally, the provisions of P.L. 99-661, giving authority to the Secretary of Defense to pay 10% above fair market price to eligible small disadvantaged businesses, should flow down to the prime contractors so that they are enabled to provide more subcontracts to Native American firms. With these recommendations enacted, the opportunity for other successful tribally owned enterprises to come into fruition are greatly enhanced.

H. Future Needs

LII's continued success is based on its ability to secure additional government and commercial contracts. Recently LII was informed of the DoD decision to drastically decrease funding for the Army's TRI-TAC Program by nearly

$100 Million for 1990-91. This may substantially affect the level of employement at LII. Although marketing efforts for LII have been accelerated, it would be difficult to replace the benefits derived from the Army's TRI-TAC Program. The employees have become very proficient in the mobile communication shelter business. As the Fixed Program Participation Time for LII in the 8(a) program is near, the development of new product lines on a competitive basis is proceeding. What is lacking now is the security of a long term contract, generating revenue, which will afford LII the time to evolve into new skill areas and new customer relationships.

PREPARED STATEMENT
BY
ROBERT W. PERRY
MANAGER, WASHINGTON OFFICE
RAYTHEON SERVICE COMPANY
AND
CHAIRMAN
CONTRACT SERVICES ASSOCIATION OF AMERICA (CSA)

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS ROBERT PERRY, MANAGER OF RAYTHEON SERVICE COMPANY'S WASHINGTON OFFICE.

I ALSO SERVE AS CHAIRMAN OF THE CONTRACT SERVICES ASSOCIATION OF AMERICA (CSA), AN INDUSTRY TRADE GROUP WITH ADVOCACY TOWARD GREATER RELIANCE BY THE FEDERAL GOVERNMENT ON THE PRIVATE SECTOR FOR ACQUIRING ITS NEEDED SERVICES IN SUPPORT OF A BROAD SPECTRUM OF GOVERNMENT FUNCTIONS.

THE BASIC PREMISE OF THAT ADVOCACY IS THAT THE FEDERAL GOVERNMENT SHOULD NOT COMPETE WITH ITS CITIZENS.

MY BRIEF COMMENTS HERE THIS MORNING WILL FOCUS ON THE AMERICAN INDIAN ENTERPRISE DEVELOPMENT PROGRAM AND ITS SPECIAL NICHE IN THAT PURSUIT.

THE RECENT HISTORY OF RAYTHEON COMPANY'S SUPPORT TO INDIAN INDUSTRIAL DEVELOPMENT TESTIFIES TO OUR DEEP COMMITMENT TO ASSIST THE GOVERNMENT IN INCREASING AND ENHANCING NATIVE AMERICAN BUSINESS DEVELOPMENT OPPORTUNITIES.

OUR SUCCESSFUL EXPERIENCE WITH THE LAGUNA INDUSTRIES INCORPORATED (LII) OF MESITA, NM BEGAN IN 1981 WITH FIRST, A STUDY, FOLLOWED BY PROJECT PLANNING AND DEFINITION, SUCCESSFUL PURSUIT OF START-UP GRANTS FROM VARIOUS GOVERNMENT AGENCIES, INCORPORATING AND ORGANIZING

A VIABLE BUSINESS INFRASTRUCTURE, A TEDIOUS CERTIFICATION PROCESS AS AN 8(A) FIRM THROUGH THE SMALL BUSINESS ADMINISTRATION, ARDUOUS PURSUIT OF THE DEFENSE DEPARTMENT'S DEPOT SYSTEM, AND MANY MORE EVENTS TOO NUMEROUS, TO MENTION HERE BUT WHICH FINALLY PRODUCED A CONTRACT BETWEEN THE U. S. ARMY AND LAGUNA INDUSTRIES IN THE FALL OF 1985 FOR $10.4M.

TODAY, THAT PROGRAM HAS GROWN TO OVER $60M AND THE U. S. ARMY AT FORT MONMOUTH HAS LABELED IT AS HIGHLY SUCCESSFUL.

MUCH CREDIT HAS TO GO TO SENATORS DOMENICI AND STEVENS FOR PROVIDING ENABLING LEGISLATION IN THE 1982 DEFENSE APPROPRIATIONS BILL ENCOURAGING ASSIGNMENT OF WORK TO AMERICAN INDIANS. ALSO, TO THE SMALL BUSINESS OFFICE UNDER THE SECRETARY OF DEFENSE FOR ITS FAITHFUL ADVOCACY OF THE PROGRAM. AND, LAST BUT NOT LEAST, TO THE CITIZENS OF THE PUEBLO OF LAGUNA WHO NEVER GAVE UP HOPE THAT ITS ALLIANCE WITH INDUSTRY WOULD ONE DAY SEE THE DOORS OF A DORMANT PLANT LOCATED ON ITS RESERVATION REOPEN TO SCORES OF TRIBAL EMPLOYEES ASSEMBLING ARMY COMMUNICATIONS SYSTEMS IN A DEPOT ENVIRONMENT.

RAYTHEON, CERTAINLY THE LAGUNAS, AND A LARGE NUMBER OF GOVERNMENT AGENCY OFFICES HAVE LEARNED A LOT FROM THIS PRECEDENT SETTING EXPERIENCE. WE CANNOT REST ON OUR LAURELS. THAT IS WHY WE SUPPORT THE EFFORTS OF THIS COMMITTEE. WE ENCOURAGE YOU TO CONTINUE THE LEAD IN ESTABLISHING A COOPERATIVE AGENDA THAT WILL ENHANCE THE SUCCESSFUL DEVELOPMENT OF AMERICAN INDIAN ENTERPRISE.

THE NEED FOR IMMEDIATE IMPLEMENTATION OF AN INCENTIVE PROGRAM FOR AMERICAN INDUSTRY TO ASSIST NATIVE AMERICAN INITIATIVES WAS NEVER HIGHER. WITH DEFENSE BUDGETS LEVELING OFF, AND MODERN MILITARY TECHNOLOGY BECOMING MORE SOPHISTICATED AND EXPENSIVE, THE POTENTIAL FOR INTRODUCING NEWER AND LESS EXPERIENCED COMPANIES INTO BUSINESS COULD BECOME LESS ATTRACTIVE. CONVERSELY, SOME OF THE HIGH TECH COMPANIES STILL FIND IT LESS PRACTICABLE TO ECONOMICALLY SATISFY SOME OF ITS REQUIREMENT WITH ITS OWN RESOURCES. THIS COULD AND OFTEN DOES PROVIDE OPPORTUNITIES FOR SUBCONTRACTING.

WE HAVE PROVEN THAT AMERICAN INDIAN ENTERPRISE CAN BE DEVELOPED TO FILL THIS NICHE SO WELL, BUT INDUSTRY NEEDS ECONOMIC INCENTIVE TO BRING CREATIVITY TO THESE ALLIANCES. THESE MAY TAKE MANY FORMS TO INCLUDE SUBCONTRACTING, TEAMING, JOINT VENTURES, ETC.

WE, FURTHER, SUPPORT THE 5% INCENTIVE EFFORT IN SECTION 504 OF THE INDIAN FINANCE ACT. THE CONCEPT OF THIS INCENTIVE TO DEFENSE CONTRACTORS IS A GOOD ONE. IF IT IS BASED ON THAT PORTION OF THE TOTAL EFFORT AWARDED TO THE INDIAN ENTERPRISE, THEN IT WOULD ENCOURAGE THE INDUSTRY TEAM MEMBER TO BE MORE GENEROUS IN HIS GOALS.

CURRENTLY, MANY GOVERNMENT CONTRACTS HAVE MANDATED MINORITY SUBCONTRACT REQUIREMENTS, BUT THEY ARE NOT ALWAYS REALISTIC AND CORPORATIONS FIND IT DIFFICULT TO MEET THESE GOALS FOR A VARIETY OF REASONS. IF THE COMPANIES WERE PROVIDED WITH THE OPPORTUNITY FOR SELF-ESTABLISHED GOALS AND ECONOMIC INCENTIVES TO ACHIEVE THEM, I BELIEVE THE CHAL-

LENGES WOULD BE MET. THESE CONTRACT EFFORTS MUST, OF COURSE, CONSIDER COMPETENCY, QUALITY, AND COMPETITIVENESS. GOOD TRANSITIONING OF MANAGEMENT, ADMINISTRATION, AND BUSINESS DEVELOPMENT WILL ASSURE THAT THESE QUALITIES ARE MET.

THE MANNER IN WHICH RAYTHEON COMPANY ASSISTED THE LAGUNAS OVER THE PAST EIGHT YEARS WOULD NOT HAVE QUALIFIED UNDER SUCH AN INCENTIVE PROGRAM AS I HAVE DISCUSSED. RAYTHEON ENCOURAGED THE U. S. ARMY TO CONTRACT DIRECTLY WITH THE LAGUNAS AND WE ASSURED OUR INVOLVEMENT IN THE SUCCESS OF THE DELIVERABLES THROUGH A SUBCONTRACT TO LAGUNA INDUSTRIES. THIS WAS TO PROVIDE MANAGEMENT TRAINING, QUALITY CONTROL, PRODUCTION MONITORING, AND A DOD APPROVED COST ACCOUNTING SYSTEM. AS THE CONTRACT PROGRESSED AND GREW AND THE LEARNING CURVE OF THE LAGUNA INDUSTRIES ROSE, RAYTHEON PROGRESSIVELY REDUCED OUR EFFORT SO THAT IN 1988 WE ENDED OUR INVOLVEMENT BY MUTUAL CONSENT OF THE LAGUNAS, THE U. S. ARMY, AND RAYTHEON. WE NOW ONLY PROVIDE BACK-UP TASKING AND OVERFLOW SUBCONTRACT WORK ON A VERY SMALL PERCENTAGE OF THE TOTAL EFFORT.

PERHAPS A MEANS COULD BE ESTABLISHED TO ENCOURAGE INCENTIVES FOR THIS TYPE OF ASSISTANCE AND MORE CONTRACTORS WOULD UNDERTAKE SIMILAR PROJECTS. THERE HAS BEEN NO OFFICIAL RECOGNITION FOR THIS PROJECT IN MEETING SMALL BUSINESS/MINORITY BUSINESS/OR 8(A) GOALS OR QUOTAS NOR WAS THERE AN INCENTIVE AWARD.

ALTHOUGH RAYTHEON EARNED A REASONABLE PROFIT ON ITS SUBCONTRACT WORK TO LAGUNAS IN PROVIDING THE ON-SITE BUSINESS DEVELOPMENT TEAM, THE EXTREME AMOUNT OF MANAGEMENT TIME AND ATTENTION GIVEN TO THE PROJECT BY MANY PEOPLE WAS EXTRAORDINARILY HIGH IN PROPORTION TO THE MATERIAL GAINS.

IN SUMMARY, I RECOMMEND RAPID IMPLEMENTATION OF AN INCENTIVE PROGRAM FOR MEMBERS OF THE DEFENSE INDUSTRY, WHO DEMONSTRATE IN SOME FORM, A BUSINESS ARRANGEMENT WITH NATIVE AMERICAN ENTERPRISE FOR PURPOSES OF DEVELOPING THESE EMERGING COMPANIES AND THE DEFENSE PROCUREMENT ENVIRONMENT WHICH SUPPORTS THEM.

THE RAYTHEON COMPANY INTENDS TO CONTINUE ITS EFFORTS IN THIS FIELD. WE TRUST THAT THESE DELIBERATIONS WILL PROVIDE THE MEANS FOR OTHERS TO JOIN US.

THANK YOU.

NORTHROP CORPORATION

JAY P. COOPER
DIRECTOR, SUPPLIER RELATIONS &
SOCIO-ECONOMIC BUSINESS PROGRAMS

TESTIMONY BEFORE THE UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

APRIL 15, 1989

Northrop Corporation has a long term commitment to both supporting reservation business enterprise and subcontracting with Indian-owned business.

For many years, Northrop has strongly supported the United Indian Development Association (UIDA) in its efforts to facilitate Indian-owned enterprise throughout the Southwest. We have procured many services and products from Indian-owned companies. The Corporate Director of Socio-Economic Business Programs has served as a permanent board member of the UIDA Council and has been involved in the organizational formation of the planned National Indian Center.

In October 1970, Northrop Corporation's Electronics Division established an electronic assembly facility on a reservation in Newtown, North Dakota. There are three indigenous tribes located in the area. The Arikara, Mandan, and Hidatsta. The endeavor sought to create a low overhead, high quality facility that would assist the competitive posture of the division. This facility, while in a relatively remote area, has operated very effectively and has been a potent factor in several successful competitions won by the division. The objectives of the facility have been accomplished.

Currently the plant employs from 88 to 92 persons and has become an important facter in the local economy. The percentage of native Americans employed at the plant runs from 30 to 35%. The mix is 2/3 female and 1/3 male. The plant has been certified to a 9858A Mil Spec level and the quality of the products is considered excellent. In fact, current rejection rates are very low when measured against other similar facilities. The plant has DCAS source inspection on a weekly basis.

The products assembled at this plant include the F14 Engine Monitoring System (FEMS) and the Turbine Engine Monitoring System (TEMS). Both black boxes are delivered directly to the U.S. Government customer. In addition, complex electronic assemblies for the F-5, Omega, and AWACS programs are assembled and delivered to Hawthorne for incorporation into other products.

While Northrop Corporation considers the plant a very successful investment overall, there have been a few negatives associated with a Northrop owned venture located on a reservation.

They are:

1. There has been a slightly higher turnover rate in native American employees.

   eg: Recently the hiring rate of native Americans was over 50%.

   The retention rate was only 30 to 35%.

2. Educational background needed to build management expertise is not immediately available in native American population.

There are, however, native American line supervisors.

3. As the facility is company owned, no credit is received on the SDB program, making solicitations from other large business entities unlikely.

4. The local Indian community school and the facility do not meld training objectives or cooperate on programs due to cost considerations. An outreach program needs to be improved by both parties.

The positives far outweigh the negatives, they include:

1. The facility has been a important factor in the local economy.

2. The facility has produced high quality electronic products for use on sophisticated U.S. Government programs.

3. Successful operation of the plant has demonstrated that with devotion of proper resources and time, a viable enterprice can be developed on a reservation.

4. The venture has developed a dedicated, trained native American reservation work force, and has produced many long term employees.

Northrop has looked at moving some B-2 and Aircraft Division work to Newtown. Because of the high quality level at the facility, this may be a possibility. In any event, conditioned on program funding and other contingencies, we are carefully examining current requirements to secure the continued operation of the Newtown plant and maintenance of a business base that will assure a competitive overhead rate.

I would like to respectfully make a few recommendations to this committee which I believe might assist in facilitating establishment of reservation enterprise.

Companies willing to invest in facilities or enterprise on a reservation should be strongly encouraged. In many instances it may be expedient for the company to retain ownership and control while the management expertise and the business base is developed.

A special 8a category might be designated which would permit large business ownership on a reservation subject to certain concise criteria which could be prescribed by law or regulation.

Allowing a sufficient incubation period which fosters management training, infuses expertise, and develops a business base would encourage large business to invest the resources and expertise necessary to "grow" a reservation enterprise. In other words, it is not necessarily a negative for a large business to initially control a reservation enterprise. The special category would allow the solicitation of the business for the plant when further business base is needed and also accord credit to the large business pursuant to Section 1207 of Public Law 99-661.

In my view, joint ventures, Indian owned enterprise, and long term Team Agreements will ultimately result from many of these embyro enterprises. The paramount result of this arrangement will be that resources will be made available to organize, train, and implement reservation enterprise. Other service and product companies might grow around what could conceivably become an industrial hub.

Large companies would be encouraged to identify specific commodity areas, eg: castings, forgings, software, needed to support their programs. The tribal community and the companies could join together to develop these enterprises.

I referenced our role in the planning and formation of a National Indian Center dedicated to the economic development of reservations enterprise. This center properly supported and staffed with technical, management, and financial expertise could act as a powerful catalyst to bring large business and Indian enterprise together. Providing the cultural and educational liaison necessary to foster both understanding and effective business relationships will encourage and assist in the education and training of management and technical personnel who could in time assume responsible roles in the reservation enterprise.

A national Indian Center with a strong business perspective could assist in fostering a reservation philosophy that would create an environment required to generate enterprise where a concious decision has been made that industrial development is the right road for that tribe to follow.

Finally, Northrop Corporation would like to sincerely thank this committee for allowing it the privilege of appearing here today. We firmly believe that assisting Indian Enterprise is not a charitable endeavor, it is only good business, both for Northrop and our nation.

TESTIMONY OF EDWARD LONE FIGHT, CHAIRMAN OF THE THREE AFFILIATED TRIBES OF FORT BERTHOLD, NORTH DAKOTA BEFORE THE U.S.SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman, Sen Burdick, Sen Conrad, and Members of the Committee, I am Edward Lone Fight, Chairman of the Three Affiliated Tribes at Fort Berthold, North Dakota. I appreciate the opportunity to testify before the Committee today regarding the potential of federal procurement programs to promote enterprise development on reservations.

As you know from your experience on this Committee and your knowlege of Indian Country, our Reservation and many reservations look to the first-time, casual observer to be desolate places with little promise of economic opportunity. More knowlegeable observers like yourselves and Indian leaders can recognize that many of these reservations often contain lands with greater potential for irrigation and for grazing, with important mineral deposits, with untapped recreation potential, with a permanent and trainable low cost workforce, and with a local government anxious to provide incentives for job-creating enterprises.

While there are many variables internal and external to the reservation which have worked to inhibit Indian economic development, it is my opinion that the lack of available capital is the overriding problem. Over the past several years, we have witnessed the decline of federal equity grants including the MESBIC, SBIC, and Economic Opportunity Act Title VII programs. We have also seen infrastructure programs such as UDAG, EDA, and CDBG decline. Also, many federal development loan programs have been sharply reduced or replaced by loan guarantee programs which have little relevance on reservations that have few, if any, banks willing and able to participate by making loans on-reservation. During this same period, we have seen several positive initiatives from the Congress in minority and disadvantaged business procurement. Both the Surface Transportation Act and

Section 1207 of the Defense Appropriations Act provide substantial new minority contracting goals in major federal procurement programs. But after the passage of the Surface Transportation Act there was a quip going around this town to the effect that all we needed now was just one experienced Indian contractor who had large barges and cranes and heavy earth moving equipment. That's a very cynical oversimplification of the problem with these two new programs, but it rang true to a lot of ears in Indian Country. It is unfortunate that these new programs were hindered by the termination of federal equity capital programs and by the unwillingness of the Defense Department to utilize its advance payments authority for the Section 1207 program. We do have high hopes for the supplemental surety bond guarantee amendments which this Committee reported and helped enact in the 100th Congress. These amendments will likely expand Indian subcontracting and contracting in Section 1207, the Surface Transportation Act, and other federal minority procurement programs.

I think, Mr. Chairman, that it will require determined efforts on the part of Congress, the Executive Branch, and Indian organizations to ensure that federal procurement programs help stimulate enterprise development on reservations.

First, we must keep in mind that most reservations are isolated. They are not often in close proximity to the urban centers where you find many large prime contractors. However, reservations are often near facilities and programs of the departments of Defense, Interior, Energy and Agriculture. These and other federal agencies should be obligated, individually or through coordinating efforts by the SBA and BIA, to reach out to nearby reservations by providing full and detailed information on all prime and subcontracting opportunities at nearby federal facilities. If this were combined with the new supplemental surety bond guarantees and the use of Defense Department advance payments authority, we might see some rapid improvement in the level of on-reservation federal procurement.

Second, I see no reason why the Office of Minority Business Enterprise and SBA cannot reach out to existing and new Indian-owned businesses through national and regional Indian organizations by providing financial assistance for the establishment and improvement of procurement information networks and for professional development activities. Timely information and expedited access to prime contractors would, I believe, have a substantial impact.

Third, Indian reservations themselves will need adequate municipal and industrial water, electric power, roads and other infrastructure required to attract and retain business start-ups and expansions.

Finally, I think we need to have small amounts of low cost equity capital available for on-reservation business start-ups and small business expansions. First-time Indian entrepreneurs cannot participate in procurement programs without a small stake. There are very few financial institutions in Indian Country and very few investment dollars circulating in reservation economies to provide such needed stakes.

Thank you, Mr. Chairman. I will be happy to answer any questions.

WRITTEN TESTIMONY

for

OVERSIGHT HEARINGS ON INDIAN PROCUREMENT OPPORTUNITIES

Held by the:

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
Room 485 Russell Senate Office Building
Washington DC 20510

Presented by:

PHILLIP MARTIN, CHIEF
MISSISSIPPI BAND OF CHOCTAW INDIANS
Route 7 Box 21
Philadelphia Mississippi 39350

April 14, 1989

My name is Phillip Martin, and I am the elected Chief of the Mississippi Band of Choctaw Indians, a tribe of 5,000 members on 21,000 acres of reservation lands in east central Mississippi. I am proud to have been invited to discuss with you today reservation joint ventures and some of the obstacles to Indian procurement that need to be removed if there is to be widespread economic progress in Indian Country.

It is not easy to get into industry, especially when you are located in an economically depressed area where there are very few resources. The story of my tribe was very grim in the first half of this century. Most tribal members worked as farmers and woodsmen, and a large percentage, sometimes upwards of 70 per cent, were unemployed. But we are to a large extent out of agriculture and forestry now, and into manufacturing and service sector jobs. By having made this transition, per capita income has increased by 192 per cent since 1975. At the conclusion of my written testimony are two charts spelling out some of the information on our enterprises and their work force of 1,458 persons. When you add the tribal government itself, which, after we contract the schools from the BIA next July, will have 650 employees (for a total of nearly 2,100 jobs) you can see why we are the largest employer in Neshoba County, Mississippi, and one of the largest employers in the state.

We started our efforts, first, with a wholly-owned tribal enterprise doing business as a dedicated supplier to the Packard Electric Division of General Motors. Secondly, we established an enterprise managed by an outside company, American Greetings. Since then, the tribally- owned enterprise has experienced rapid growth and development of technical expertise, but we have focused our efforts in new manufacturing enterprises on the joint venture mechanism. We find joint ventures to be of great value to the tribe because they are a meeting of expertise (the joint venture partner) and labor (the tribe), which benefits both parties. As the enterprises grow and prosper, there is a natural transfer of expertise to the tribal side. We are now at the point in one of our joint venture enterprises where the tribe is acquiring a portion of the joint venture partner's share. At our other joint venture manufacturing enterprise, we have recently adopted a Five Year Plan (approved by the Ford Motor Company) which will assure increasing levels of local control and increased volumes of product to create additional jobs, until, by the end of the five year period, our enterprise will be autonomous.

Two of our enterprises (those manufacturing automotive wiring harnesses and automobile radio speakers) have recently qualified for "Q1" ratings from the Ford Motor Company. The standards for achieving "Q1" are rigorous, but once you attain it you are recognized as a capable company that they can rely on. We are working on attaining "Q1" status for a third enterprise.

Joint ventures, however, are very supersensitive arrangements that require considerable diligence in setting up and caution in maintaining. First, you need to identify a potential venture partner that has his, and your, best interests in mind, a philosophy of both partners mutually benefiting from the enterprise, and one who shares a common goal of doing something positive for the community, recognizing an obligation to build a better quality of life. You need also identify a joint venture partner whose product line is conducive to your labor force's skills and capabilities.

Then the two parties have to get together and come up with a suitable and workable business concept -- before the lawyers are called in. At this time you need to establish that the potential partner has the financial resources to contribute a fair and equitable share to the venture -- and that the tribe can do the same. This is where the main difficulties come in.

Tribes do not have capital, nor do they have the management or technical expertise, to furnish a fair share. What you get into is the question of what the incentive to the partner is. Tribes, after all, are competing with other communities all across this country, that do have capital and management and technical expertise.

Put in a position like this, the tribe is inevitably drawn to making concessions to the partner, for one reason because the partner perceives that he is at a greater risk. In making concessions, tribes can end up with a situation where indeed they are putting their people in permanent jobs, but the tribe itself will lose out on an equal share of the financial return on the joint venture.

At this critical point, tribes must line up their resources to try to balance the equation as best they can. This involves furnishing of the land, obtaining of tax exemptions, and securing loans and grants, available because of tribal status, for buildings, equipment, and employee training. (In the Mississippi Choctaw industrial effort, 20 per cent of the investments have been grants, 80 per cent loans and venture partner investments.)

To be able to do all this, a tribe must have expert personnel on board and ongoing (plus good legal counsel), who can not only put these packages together, but can also continually monitor the joint venture's progress to make sure that the venture remains fair and equitable. If it does not so remain, the tribe will not build equity in its share. The venture will remain a source of jobs, but the tribe will be in a fiscal situation where it must continually play catch-up.

The Mississippi Band of Choctaw Indians currently does no business with the Department of Defense. DoD is itself a complex industry as it relates to military equipment and hardware, and is, so I am told, very difficult to do business with. Even though we now have annual sales projected at a level of $54 million, with the necessary management expertise to control this level of performance, the DoD programs are too cumbersome and bureaucratic for our level of expertise. In that we find this prospect unwieldy, I would question how other tribes, not currently in the manufacturing business and without access to technical expertise, could ever hope to avail themselves of a defense contract. I think the emphasis on Indian enterprises doing business with DoD should lie with the defense contractors rather than the Department itself. Congress can help in this regard by strongly encouraging the defense contractors to utilize Indian businesses, and by exempting the Indian businesses from as much of the staggering paperwork as possible.

Because of the nature of defense contracting, a particular level of experience and expertise is required in order to be successful in this type of business venture. Availability of management expertise, including defense oriented procedures, quality control, engineering, and top management familiar with the sometimes arcane DoD contractual policies, is severely limited in this country, especially in remote areas. This causes additional hardships on Indian tribes in breaking through this barrier of capability.

I know that the proposed section 504 of the Indian Finance Act contains a five per cent incentive for defense contractors doing business subcontracting to Indian enterprises, which would help. I would suggest that additional language is needed to induce large corporations, which addresses tax exemptions for businesses doing business on reservations either on their own or as joint venture partners. I think that businesses would consider this to be even more of an incentive; and I would guess that the amount of money lost to the Treasury would be even less than would be the case with the five per cent in proposed section 504, since it would only apply to the business' share of profits.

Actually, instead of the five per cent being awarded to defense contractors, I would suggest that the capability barriers I mentioned before would mandate a five per cent award to the Indian subcontractors to obtain qualified personnel and consultation in the defense contracting business, for the first two years or so.

Surely these incentives will pay off in the long run. The situation we are discussing is basically one of using awards and incentives to shift defense economics toward the disadvantaged areas of the country. In the case of Indian reservations. any incentives awarded will be more than offset by 1) the availability of labor, which is not found in areas where there is a high concentration of defense industries, 2) increases in the federal income tax base on reservations because of increased employment, and 3) declines in the levels of expensive welfare and other income maintenance benefits.

Over the years, we and many other tribes have had their problems with the SBA 8(a) program. It usually gets to the point that those applying for 8(a) status reach a decision that the program is so overly regulated that they decide not to fool with it. I would suggest that the committee members consider an alternative approach for this, and have DoD set up another mechanism for recognizing Indian enterprises that would involve certification by tribal governments, who are certainly capable of certifying who the legitimate reservation business enterprises are. This would eliminate a great deal of red tape.

Aside from SBA, though, there are more systemic barriers to Indian economic progress, in BIA, HUD, EDA, and other places, which are simply not geared to deal with business propositions. These agencies do have dollars for infrastructure improvements, but they proceed at their own paces -- that is to say, slowly. When you are involved with businesses they are on a time frame, and contracts, such as defense contracts, need to start up on short notice and end quickly. Though the Bureau's Indian Financing Act loan guaranty program has been a vital part in our industrial development effort, funds received through the Indian Finance Act, for example, are cumbersome and slow. There are too many people who have to review and approve the applications, few of whom have actual business experience, or, if they do, not with high technology systems and complicated products.

In summary, I would say that I would urge consideration for a combination of contractor tax reductions and subcontractor cost incentives; for a new and streamlined mechanism to replace SBA 8(a) for Indian defense subcontractors; and for better capabilities for understanding business procedures in dealing with Indian economic development in the government as a whole. I would strongly urge that the committee consider any proposals that will eliminate current obstacles to Indian economic progress, especially in terms of paperwork requirements, and to encourage defense contractors to make use of the high-quality products that the reservations can produce.

MISSISSIPPI BAND OF CHOCTAW INDIANS

TRIBAL ENTERPRISES
04/12/89

Enterprise	Type	Customers	Products	Annual Sales	Employees
Chahta Enterprise	100% Tribe	Ford United Technologies	Wiring Harnesses Electrical Window Lift Motors	$18.7 million	637
Choctaw Manufacturing Enterprise	JV	Navistar International Westinghouse Chrysler Xerox	Wiring Harnesses	15 million	303
Choctaw Electronics Enterprise	JV	Ford Chrysler	Automobile Radio Speakers	10 million	145
Choctaw Greetings Enterprise	100% AGC	American Greetings	Hand-finished Greeting Cards	?[1]	145
Choctaw Residential Center Enterprise	100% Tribe	Elderly Indians & non-Indians	Intermediate Skilled Nursing Care	1.93 million	118
Choctaw Shopping Center Enterprise	100% Tribe	Various	Commerical ventures	0.8 million	40
Chata Development Company	100% Tribe	Various	Construction	8 million	70
TOTALS				$54.43 million	1,458[2]

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[1] Managed by American Greetings Corporation; no sales figures available

[2] An estimated $3 million in increased federal tax revenues annually.

MISSISSIPPI BAND OF CHOCTAW INDIANS

FINANCIAL AND EMPLOYMENT DATA

Financial Investments:

Project	Federal	Tribal	Private	State/Local	Total Investment	Total Employees	Projected Annual Sales	Square Footage
Chata Development Company c.1969	0	1,300,000	0	0	1,300,000	70	8,000,000	
Chahta - Neshoba Co. c.1979, 83, 86	1,200,000	3,200,000	500,000	230,000	5,130,000	362	13,000,000	98,000
Chahta - Kemper Co. c.1986	350,000	525,000	0	175,000	1,050,000	125	2,000,000	23,000
*Chahta - Newton Co. c.1989	500,000	155,000	345,000	0	1,000,000	150	3,700,000	23,000
Choctaw Greetings - Neshoba Co. c.1981	0	0	0	2,600,000	2,600,000	145		120,000
Choctaw Electronics - Neshoba Co. c.1985	0	1,050,000	550,000	0	1,600,000	145	10,000,000	43,000
Choctaw Manufacturing - Leake Co. c.1986	1,130,523	782,630	1,900,000	0	3,813,153	153	11,300,000	43,000
*Choctaw Manufacturing - Leake Co. c.1989	518,351	0	345,567	0	863,918	150	3,700,000	28,920
Choctaw Residential Center c.1987	477,900	2,409,765	0	0	2,887,666	118	1,930,000	42,000
Choctaw Shopping Center c.1988	500,000	900,000	0	0	1,400,000	40	800,000	28,545
TOTAL INVESTMENTS	$4,675,774	$10,322,395	$3,640,567	$3,005,000	$21,644,737	1,458	$54,430,000	449,465

* NOTE: Under Development/Construction: Opening 1989.

REVISED 4/12/89

THE DEPARTMENT OF DEFENSE

STATEMENT ON

INDIAN BUSINESS DEVELOPMENT OPPORTUNITIES

BY

MR. HORACE J. CROUCH
DIRECTOR, SMALL AND DISADVANTAGED
BUSINESS UTILIZATION, OFFICE OF
THE UNDER SECRETARY OF DEFENSE
ACQUISITION

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE
APRIL 14, 1989

MR CHAIRMAN:

I AM PLEASED TO APPEAR BEFORE THIS COMMITTEE TO TESTIFY ON THE STRONG DEPARTMENT OF DEFENSE (DOD) COMMITMENT TO ALL SMALL AND SMALL DISADVANTAGED BUSINESSES, INCLUDING THOSE SMALL DISADVANTAGED BUSINESSES OWNED AND OPERATED BY NATIVE AMERICANS AND BY INDIAN TRIBES.

DOD MAINTAINS A SIGNIFICANT SMALL AND SMALL DISADVANTAGED BUSINESS PROGRAM BECAUSE WE RECOGNIZE THAT SMALL AND SMALL DISADVANTAGED BUSINESSES PLAY A VITAL ROLE IN OUR NATIONAL SECURITY AND CONTRIBUTE SIGNIFICANTLY TO OUR DEFENSE INDUSTRIAL BASE.

I AM ENCLOSING WITH MY STATEMENT SOME CHARTS WHICH DEPICT OUR SMALL AND SMALL DISADVANTAGED BUSINESS PROGRAM PERFORMANCE DURING THE PAST FIVE YEARS. WHILE I WILL NOT DISCUSS THIS DATA EXTENSIVELY, I WOULD LIKE TO POINT OUT SOME NOTEWORTHY ISSUES INDICATED BY THE CHARTS.

OF THE $130.8 BILLION IN PRIME CONTRACTS AWARDED TO U.S. BUSINESS FIRMS BY THE DEFENSE DEPARTMENT DURING FY 1988, APPROXIMATELY $25.2 BILLION OR 19.2% WAS AWARDED TO SMALL BUSINESSES. IN ADDITION, OUR MAJOR PRIME CONTRACTORS AWARDED $22.3 BILLION IN SUBCONTRACTS TO SMALL BUSINESS CONCERNS DURING FY 1988. THIS MEANS THAT SMALL BUSINESS RECEIVED MORE THAN $47.5 BILLION OF DEFENSE CONTRACT DOLLARS. TO PUT THESE FIGURES IN PERSPECTIVE, LET ME MERELY SAY THAT ONE OUT OF EVERY THREE DEFENSE DOLLARS SPENT WITH U.S. BUSINESS FIRMS DURING FY 1988 WAS AWARDED TO SMALL BUSINESSES.

THE DEPARTMENT IS FULLY COMMITTED TO INCREASING THE ROLE OF BOTH SMALL AND SMALL DISADVANTAGED BUSINESSES IN DEFENSE PROCUREMENTS. WE ARE AGGRESSIVELY PURSUING AN OVERALL STRATEGY TO CREATE BUSINESS OPPORTUNITIES FOR ALL SEGMENTS OF THE SMALL AND SMALL DISADVANTAGED BUSINESS COMMUNITY. FOR EXAMPLE, WE HAVE ESTABLISHED SPECIFIC GOALS TO INCREASE OUR CONTRACT AWARDS TO SMALL DISADVANTAGED BUSINESSES. OUR OBJECTIVE IS TO AWARD 4% OF OUR TOTAL CONTRACT DOLLARS TO

SMALL DISADVANTAGED BUSINESS IN FY 1989; 4.5% IN 1990; AND 5% IN 1991.

HOW ARE WE DOING? LAST YEAR, THE PERCENTAGE OF OUR CONTRACT AWARDS IN THIS CATEGORY INCREASED 10% FROM 3.2% IN 1987 TO 3.6% BY THE END OF FY 1988. DURING THIS SAME PERIOD, THE DOLLAR VALUE OF OUR PRIME CONTRACT, 8(A) CONTRACT AND SUBCONTRACT AWARDS TO SMALL DISADVANTAGED BUSINESS CONCERNS INCREASED 10% GOING FROM $4.3 BILLION IN FY 1987 TO APPROXIMATELY $4.7 BILLION DURING FY 1988. ALTHOUGH WE STILL HAVE A WAY TO GO, WE ARE MAKING PROGRESS.

WE MUST POINT OUT, HOWEVER, THIS IS A VERY COMPLEX ISSUE. THERE ARE NO QUICK FIXES OR SIMPLE ANSWERS.

TO MEET THE 5% GOAL WE ARE TAKING SEVERAL INNOVATIVE STEPS AND EMPLOYING A NUMBER OF TOOLS, INCLUDING STATUTORY AUTHORITY THE CONGRESS HAS GIVEN US. FOR EXAMPLE, WE ARE SELECTIVELY USING THE AUTHORITY GRANTED BY SECTION 1207 OF PUBLIC LAW 99-661, WHICH ALLOWS US TO PAY UP TO 10% ABOVE THE FAIR MARKET PRICE, AND TO USE LESS THAN FULL AND OPEN COMPETITIVE

PROCEDURES; TO ESTABLISH SMALL DISADVANTAGED BUSINESS SET-ASIDES; AND A 10% EVALUATION FACTOR ON UNRESTRICTED SOLICITATIONS WHEN AN AWARD IS BASED ON PRICE.

IN ADDITION, WE ARE USING THE AUTHORITY OF THIS STATUTE TO PROVIDE TECHNICAL ASSISTANCE TO SMALL DISADVANTAGED BUSINESSES. WE HAVE ALREADY HELD 17 CONFERENCES NATION-WIDE AIMED AT IDENTIFYING AND STIMULATING PARTICIPATION OF SMALL AND DISADVANTAGED BUSINESSES IN DEFENSE CONTRACTING. A NUMBER OF THESE CONFERENCES HAVE BEEN HELD IN AREAS WITH HIGH NATIVE AMERICAN POPULATIONS SUCH AS COLORADO AND CALIFORNIA. ELEVEN MORE CONFERENCES HAVE BEEN SCHEDULED FOR THIS YEAR IN SITES FROM PUERTO RICO TO HAWAII.

AMONG OTHER RECENTLY ENACTED LEGISLATION THAT IMPACTS IN THIS AREA IS PUBLIC LAW 100-656, THE BUSINESS OPPORTUNITY DEVELOPMENT REFORM ACT OF 1988, THAT REVISES SIGNIFICANT ASPECTS OF THE 8(A) PROGRAM. IT INCLUDES AUTHORITY TO ALLOW FOR SPECIAL ARRANGEMENTS BETWEEN TRIBALLY- OWNED BUSINESSES AND LARGE BUSINESS FIRMS IN THE PERFORMANCE OF CONTRACTS AWARDED UNDER THE 8(A) AUTHORITY. THE SMALL

BUSINESS ADMINISTRATION HAS NOT YET ISSUED GUIDANCE CONCERNING IMPLEMENTATION OF THIS PROVISION OF THE STATUTE; HOWEVER, A REQUEST FOR PUBLIC COMMENTS WAS RECENTLY PUBLISHED.

AS I AM SURE THIS COMMITTEE KNOWS, THE DOD ALREADY HAS SPECIAL OUTREACH PROGRAMS TO PROVIDE GREATER OPPORTUNITIES FOR INDIAN BUSINESSES IN THE DEFENSE ACQUISITION PROGRAM. ONE SPECIAL INITIATIVE INCLUDES A MEMORANDUM OF UNDERSTANDING BETWEEN SBA AND DOD WHERE IN SBA INCLUDES MORE INDIAN BUSINESS IN THE 8(A) PROGRAM. WE SUPPORT THIS INITIATIVE VIA 8(A) CONTRACTING REQUIREMENTS.

ANOTHER INITIATIVE IS A PROGRAM IN WHICH DOD, UNDER A COOPERATIVE AGREEMENT PROGRAM MANAGED BY OUR DEFENSE LOGISTICS AGENCY, FUNDS FIVE PROCUREMENT TECHNICAL ASSISTANCE CENTERS TO HELP BUSINESSES OWNED BY NATIVE AMERICANS MARKET THEIR GOODS AND SERVICE TO THE DOD. IN FY 1989 THE TOTAL PROGRAM COSTS FOR MAINTAINING THESE FIVE CENTERS AMOUNTS TO MORE THAN $800,000; THE DOD IS PAYING $500,000 AS ITS SHARE OF THE COST.

THESE CENTERS ARE ON THE LOCAL SCENE, GIVING DAY-TO-DAY ASSISTANCE TO INDIAN BUSINESS FIRMS, AND CAN PROVIDE MUCH GREATER AND DETAILED TECHNICAL ASSISTANCE THAN CAN DOD REPRESENTATIVES. THE ASSISTANCE PROVIDED BY THESE CENTERS INCLUDES HELP IN PREPARING BIDS AND PROPOSALS AND IN SETTING UP QUALITY ASSURANCE AND ACCOUNTING SYSTEMS WHICH DOD REPRESENTATIVES MAY BE SPECIFICALLY PRECLUDED FROM DOING. WE BELIEVE THIS IS AN EXCELLENT PROGRAM WHICH IS BEING ENTHUSIASTICALLY RECEIVED BY THE CONGRESS AND THEIR INDIAN CONSTITUENTS.

WE ARE ALSO AGGRESSIVELY PURSUING A SERIES OF OTHER INITIATIVES TO INCREASE THE PARTICIPATION OF THE SMALL DISADVANTAGED BUSINESS COMMUNITY IN OUR ACQUISITION PROCESS. THESE INITIATIVES, WHICH ARE BROADER IN SCOPE AND CONSISTENT WITH THE INTENT OF SECTION 504 OF P.L. 100-442, ENCOURAGE INCREASED SUBCONTRACTING OPPORTUNITIES FOR NATIVE AMERICAN BUSINESSES. THESE INCLUDE:

- CONSIDERATION OF THE EXTENT OF SMALL DISADVANTAGED BUSINESS PARTICIPATION AS AN

EVALUATION FACTOR IN SOURCE SELECTION FOR MAJOR SYSTEMS.

- SPECIFYING CONSIDERATION OF SMALL DISADVANTAGED BUSINESSES FOR LEADER/FOLLOWER ACQUISITION ARRANGEMENTS.

- INCREASING EMPHASIS ON THE USE OF REMEDIES CURRENTLY AVAILABLE FOR NONCOMPLIANCE WITH SUBCONTRACTING PLANS, I.E., CURE AND SHOW-CAUSE NOTICES AND DEFAULT PROCEDURES.

- TESTING REVISED PROGRESS PAYMENT PROCEDURES, UNDER THIS TEST, HIGHER PROGRESS PAYMENTS WILL BE PROVIDED TO PRIME CONTRACTORS EXCEEDING THEIR GOALS AND LOWER PAYMENTS WILL BE PROVIDED WHERE THERE IS A FAILURE TO MEET THESE GOALS.

- INCREASING THE PROGRESS PAYMENT RATE FOR SMALL DISADVANTAGED BUSINESSES TO 90%.

- PLACING RENEWED EMPHASIS ON BREAKING OUT REQUIREMENTS TO PROVIDE INCREASED CONTRACTING OPPORTUNITIES FOR SMALL DISADVANTAGED BUSINESSES.

- ENHANCING OPPORTUNITIES UNDER THE 8(A) PROGRAM.

- MAKING ACTIONS DEVOTED TO FURTHERING THE ACHIEVEMENT OF OUR 5% GOAL A RATED PERFORMANCE STANDARD FOR ACQUISITION PERSONNEL.

- ENCOURAGING OUR PRIME CONTRACTORS TO PROVIDE FINANCIAL AND TECHNICAL ASSISTANCE TO SMALL DISADVANTAGED BUSINESSES. IN CERTAIN SITUATIONS, DOD WILL ESTABLISH LINE ITEMS IDENTIFYING THE PRIME CONTRACTOR'S RESPONSIBILITY TO PROVIDE TECHNICAL ASSISTANCE TO THIS BUSINESS SECTOR. ALSO, WE ARE IN THE PROCESS OF CLARIFYING THE ALLOWABILITY OF THESE COSTS IN SITUATIONS WHERE THERE IS NOT A SEPARATELY PRICED LINE ITEM.

WE HAVE ALSO IMPLEMENTED MEASURES WHICH PERMIT PAYMENT OF A 10% INCENTIVE FEE TO OUR MAJOR PRIME CONTRACTORS FOR EXCEEDING THEIR SMALL DISADVANTAGED BUSINESS SUBCONTRACTOR GOALS PROVIDED THE GOAL IS A MINIMUM OF 5%. UNDER THIS PROVISION, THE PRIME CONTRACTOR WILL RECEIVE 10% OF THE DIFFERENCE BETWEEN THE TOTAL DOLLAR AMOUNT OF SUBCONTRACTS

AWARDED TO SMALL DISADVANTAGED BUSINESS AND THE GOAL AMOUNT STATED IN THE CONTRACT.

FINALLY IN CONJUNCTION WITH OUR EFFORTS TO ENCOURAGE PRIME CONTRACTOR PARTICIPATION, I MEET MONTHLY WITH THE AEROSPACE INDUSTRIES ASSOCIATION WHICH REPRESENTS MANY OF OUR MAJOR PRIME CONTRACTORS TO MONITOR THEIR PROGRESS, SHARE IDEAS, AND ENCOURAGE THEIR EFFORTS TO ACHIEVE THE SUBCONTRACTING GOAL.

TODAY THE COMMITTEE WILL HEAR FROM SEVERAL MAJOR DOD PRIME CONTRACTORS WHO HAVE SOME OUTSTANDING EXAMPLES OF HOW WE CAN SUCCEED IF WE USE THE MANY TOOLS THAT ARE ALREADY AVAILABLE. WE ARE PROUD OF THESE EXAMPLES AND I HOPE THAT WE CAN BUILD UPON THIS TYPE OF EXPERIENCE AND REPLICATE THESE INITIATIVES IN OTHER LOCATIONS.

IN CLOSING, LET ME SAY THAT SMALL AND SMALL DISADVANTAGED BUSINESSES ARE VITALLY IMPORTANT TO OUR NATIONAL SECURITY. THEY ARE THE KEY TO MAINTAINING A STRONG DEFENSE INDUSTRIAL BASE. THEREFORE, WE MUST ALL WORK TOGETHER TO INCREASE OPPORTUNITIES FOR ALL SEGMENTS OF SMALL AND SMALL DISADVANTAGED

BUSINESSES, INCLUDING PROVIDING OPPORTUNITIES FOR FIRMS THAT ARE OWNED AND OPERATED BY NATIVE AMERICANS. IN THIS REGARD, WE ARE CONVINCED THAT OUR STRATEGY AND THE AGGRESSIVE PLAN WE HAVE LAID OUT WILL INCREASE OPPORTUNITIES FOR SMALL AND SMALL DISADVANTAGED BUSINESS PARTICIPATION IN OUR CONTRACTING PROCESS.

HAVE WE DONE ENOUGH? LET ME ANSWER BY SIMPLY SAYING THAT THERE IS ALWAYS ROOM FOR IMPROVEMENT. WE ARE COMMITTED TO SMALL AND SMALL DISADVANTAGED BUSINESS AND WE LOOK FORWARD TO WORKING WITH YOU ON OUR INITIATIVES.

THANK YOU MR CHAIRMAN. THAT CONCLUDES MY PREPARED REMARKS; I WILL BE HAPPY TO ANSWER ANY QUESTIONS.

DEPARTMENT OF DEFENSE

PRIME CONTRACT AWARDS

(IN BILLIONS)	FY 84	FY 85	FY 86	FY 87	FY 88
AWARDS TO ALL FIRMS	$124.9	$139.6	$136.5	$135.3	$130.8
AWARDS TO SMALL FIRMS	$ 23.8	26.0	26.9	26.6	25.2
AWARDS TO SMALL DISADVANTAGED FIRMS*	$ 2.7	2.8	3.1	3.3	3.6
PERCENT OF AWARDS TO SMALL FIRMS	19.1%	18.7%	19.7%	19.7%	19.3%
PERCENT OF AWARDS TO SMALL DISADVANTAGED FIRMS	2.2%	2.1%	2.3%	2.5%	2.8%
PERCENT OF SMALL FIRMS AWARDS TO SMALL DISADVANTAGED FIRMS	11.4%	11.1%	11.6%	12.5%	14.4%

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*INCLUDES PRIME CONTRACT AND SECTION 8(a) AWARDS.

DEPARTMENT OF DEFENSE
SMALL BUSINESS SUBCONTRACT PROGRAM

	FY 84	FY 85	FY 86	FY 87	FY 88
1. NO. CONTR. REPORTING	1,208	1,205	1,353	1,469	1,571
2. VALUE SUBCONT.	$47,582	$54,494	$52,898	$53,115	$58,799
LG. BUS.	29,984	34,348	32,536	31,557	36,490
SM. BUS.	17,598	20,145	20,362	21,558	22,309
SM. DIS. BUS.	812	939	1,016	1,023	1,134
3. PERCENT SUBCONT.					
LG. BUS.	62.3%	63.0%	61.5%	59.4%	62.1%
SM. BUS.	37.7%	37.0%	38.5%	40.6%	37.9%
SM. DIS. BUS.	1.7%	1.7%	1.9%	1.9%	1.9%

$ = MILLIONS

DEPARTMENT OF DEFENSE

DOD SMALL DISADVANTAGED BUSINESS
PRIME AND SUBCONTRACT PERFORMANCE
(DOLLARS IN MILLIONS)

FISCAL YEAR	(1) TOTAL PRIME AWARDS	(2) SDB PRIME	(3) [2/1] % OF PRIME	(4) TOTAL SUBC. AWARDS	(5) SDB SUBC.	(6) [5/4] % OF SUBC.	(7) [2+5] SDB TOTAL	(8) [7/1] % OF TOTAL
1988	$130,815	$3,631.1	2.8%	$58,799	$1,134.3	1.9%	$4,765.4	3.6%
1987	$135,340	$3,316.6	2.5%	$53,115	$1,023.2	1.9%	$4,339.8	3.2%
1986	$136,497	$3,122.2	2.3%	$52,898	$1,015.5	1.9%	$4,137.7	3.0%
1985	$139,587	$2,898.6	2.1%	$54,494	$939.0	1.7%	$3,837.6	2.7%
1984	$124,912	$2,709.5	2.2%	$47,582	$812.4	1.7%	$3,521.9	2.8%
1983	$121,096	$2,389.8	2.0%	$39,796	$652.4	1.6%	$3,042.2	2.5%
1982	$102,463	$2,186.7	2.1%	$35,329	$578.4	1.6%	$2,765.1	2.7%
1981	$87,195	$1,874.2	2.1%	$33,937	$554.0	1.6%	$2,428.2	2.8%
1980	$66,704	$1,207.1	1.8%	$25,499	$452.3	1.8%	$1,659.4	2.5%
1979	$58,174	$909.3	1.6%	$21,245	$344.5	1.6%	$1,253.8	2.2%
1978	$54,359	$621.1	1.1%	$17,454	$320.8	1.8%	$941.9	1.7%
1977	$47,113	$372.6	0.8%	$15,038	$153.2	1.0%	$525.8	1.1%
1976+T	$49,240	$306.6	0.6%	$15,135	$131.0	0.9%	$437.6	0.9%
1975	$38,213	$196.3	0.5%	$12,629	$69.1	0.5%	$265.4	0.7%
1974	$34,518	$163.1	0.5%	$12,050	$52.2	0.4%	$215.3	0.6%
1973	$32,479	$97.7	0.3%	$11,094	$22.1	0.2%	$119.8	0.4%
1972	$34,047	$72.8	0.2%	$9,926	$0.0	0.0%	$72.8	0.2%
1971	$31,063	$27.4	0.1%	$9,471	$0.0	0.0%	$27.4	0.1%
1970	$31,777	$13.4	0.0%	$11,932	$0.0	0.0%	$13.4	0.0%
1969	$37,986	$8.5	0.0%	$14,872	$0.0	0.0%	$8.5	0.0%

DEPARTMENT OF DEFENSE

COMBINED SMALL DISADVANTAGED BUSINESS AWARDS FISCAL YEAR COMPARATIVE PERFORMANCE

		TOTAL AWARDS*	8(a)	DIRECT	SET-ASIDE	SUB-CONTRACT	TOTAL	%	
ARMY	FY 1987	$32,862	$882.7	$406.8	$0.0	$69.0	$1,358.5	4.1	
	FY 1988	$29,569	$819.0	$466.8	$57.0	$73.2	$1,416.0	4.8	▲
NAVY	FY 1987	$48,944	$632.1	$302.5	$0.0	$137.2	$1,071.8	2.2	
	FY 1988	$50,054	$676.0	$342.7	$66.3	$157.7	$1,242.8	2.5	▲
AIR FORCE	FY 1987	$40,615	$504.0	$223.0	$0.0	$279.7	$1,006.7	2.5	
	FY 1988	$39,601	$552.2	$271.9	$21.5	$255.2	$1,100.8	2.8	▲
DLA	FY 1987	$9,232	$86.9	$202.1	$0.0	$537.3	$826.3	9.0	
	FY 1988	$9,244	$58.7	$222.4	$0.5	$648.2	$929.6	10.1	▲
ODA	FY 1987	$3,687	$63.0	$13.5	$0.0	$0	$76.5	2.1	
	FY 1988	$2,347	$56.8	$19.2	$0.0	$0	$75.9	3.2	▲
DOD	FY 1987	$135,340	$2,168.7	$1,147.9	$0.0	$1,023.2	$4,339.8	3.2	
	FY 1988	$130,815	$2,162.8	$1,323.0	$145.3	$1,134.3	$4,765.4	3.6	▲

$ = Millions

*Includes only prime contract awards.

9-0802

TESTIMONY OF JOHNNIE ALBERTSON
DEPUTY ASSOCIATE ADMINISTRATOR
MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
APRIL 14, 1989

Mr. Chairman, Senator McCain and Members of the Committee, I am pleased to appear before you today to discuss procurement opportunities for Indian Tribes in light of the major 8(a) reform legislation passed last year. My name is Johnnie Albertson and I am the Deputy Associate Administrator for Minority Small Business and Capital Ownership Development at the Small Business Administration.

The U.S. Small Business Administration has recently published for public comment proposed amendments to its regulations governing the Minority Small Business and Capital Ownership Development Program. These proposed regulations include, among others, changes to the program to implement those sections of the Business Opportunity

Development Reform Act of 1988 (Reform Act), Public Law 100-656, related to 8(a) program participation by concerns which are tribally-owned. In addition, the proposed regulations also incorporate existing Agency policy and implement proposed policy changes regarding tribally-owned entities.

The proposed regulations include as section 124.112, a new section setting forth the eligibility requirements for concerns owned by Indian tribes. For purposes of the proposed regulations, the term Indian tribe includes Alaska Native Corporations organized pursuant to the Alaska Native Claims Settlement Act, as amended.

Because tribal ownership is significantly different from ownership by disadvantaged individuals, SBA proposes to establish some separate application requirements for tribally-owned entities. Although tribally-owned entities have been eligible for the 8(a) program for a number of years and most of the separate requirements have been required as a matter of Agency policy and procedure, this is the first time SBA has included such requirements in its regulations.

Under the proposed rules, and absent evidence to the contrary, an Indian tribe which is found to meet SBA's definition is deemed to be socially disadvantaged. The Indian tribe is required to demonstrate that the tribe itself is economically disadvantaged. In determining economic disadvantage SBA will consider information provided by the tribe including the number of tribal members, the tribal unemployment rate, the per capita income of tribal members (excluding judgment awards), the percentage of the local Indian population below the poverty level, the tribe's access to capital markets, and financial condition of the tribe.

In order to qualify for 8(a) program certification, a concern owned by an eligible Indian tribe must be organized for profit and must waive any sovereign immunity which may attach by reason of tribal ownership. In addition, under the proposed rules, SBA requires that the primary economic benefits from the operations of the 8(a) Participant accrue to the tribe. Such receipt of economic benefit is presumed if the concern is located on the tribe's reservation or on other land which was tribally-owned prior to the existence of the concern.

A tribally-owned concern must also qualify as a small business concern in its primary industry classification. Current SBA size regulations provide that size determinations will be based on the size of the concern including all affiliates. Tribal ownership will not, in and of itself, cause the concern to be considered to be affiliated with the tribe or with other entities owned by the tribe. However, SBA may find two or more tribally-owned concerns to be affiliated on grounds other than common ownership.

The ownership requirements for tribally-owned entities is generally the same as those for other entities which are not tribally-owned. However, unlike other 8(a) Participants, a tribe is permitted to own more than one 8(a) firm provided that the concerns are not in the same or similar line of business.

While many of the management and control requirements for tribally-owned concerns are the same as those imposed on other entities which are not tribally owned, provisions of the Reform Act impose some different control and management requirements for tribally owned concerns. Tribally-owned concerns must be managed by members of the tribe who possess the same degree of technical experience and expertise as required of other 8(a) concern managers. However, the Reform Act authorizes managers of tribally-owned concerns to manage a maximum of two such concerns. In contrast, other 8(a) managers are allowed to manage only one 8(a) concern, and to participate, as a disadvantaged owner, in only one concern. SBA is also proposing to require Agency approval prior to any participation in the daily management of a tribally-owned Participant or service on the concern's Board of Directors by members of the tribal council.

Most of the requirements for concerns owned by Alaska Native Corporations are the same as for other Indian tribes. However, SBA has proposed some different requirements in accordance with the requirements of the Alaska Native Claims Settlement Act (Native Claims Act), as amended.

For purposes of evaluating economic disadvantage for Alaska Native Corporations, SBA proposes to exclude from consideration any assets or income derived from distributions of the Alaska Native Fund established by the Native Claims Act. SBA also makes clear in its proposed regulation that the non-profit status of an Alaska Native Corporation does not affect the requirement that an 8(a) concern be a "for-profit" concern. The proposed regulation also states that an Alaska Native who holds Settlement Common Stock should be treated as a tribal member for purposes of the control and management requirements for 8(a) program eligibility. In addition, officers or directors of the Alaska Native Corporation should be treated as members of a tribal council for purposes of the requirement that participation in the daily management and control of the 8(a) Participant must be approved by SBA.

Tribally-owned concerns are eligible for all assistance authorized under Sections 8(a) and 7(j). Additionally, tribally-owned concerns may be awarded an 8(a) contract on a sole-source basis even if such an award exceeds the competitive contract thresholds required by the Reform Act.

Also, tribally-owned concerns may enter into a maximum of two joint ventures without regard to the size of the joint venture under the following conditions:

> the tribally-owned concern must own 51 percent or more of the joint venture;
>
> the joint venture must be located on the tribe's reservation or on land owned by the tribe;
>
> the joint venture must perform most of its activities on such reservation or tribally-owned land; and
>
> members of the tribe must be employed for at least 50 percent of the joint venture's workforce.

Currently there are 12 tribally-owned concerns approved for participation in the 8(a) program. Of the 12 firms, one is classified as an Alaska Native Corporation. During FY 1988, these twelve firms received a total of $29,676,037 in 8(a) contracts.

This concludes my prepared remarks, Mr. Chairman. I will be pleased to answer any questions you may have.

Testimony

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GEOGRAPHIC DISTRIBUTION
OF
TRIBALLY-OWNED 8(A) PROGRAM PARTICIPANTS
BY
SBA REGIONS

	NO. FIRMS
REGION 5	6
(Illinois, Indiana, Michigan Minnesota, Ohio, Wisconsin)	
REGION 6	1
(Arkansas, Louisiana, Oklahoma New Mexico, Texas)	
REGION 8	3
(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)	
REGION 10	2
(Alaska, Idaho, Oregon, Washington)	

**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**

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TRIBAL COUNCIL MEMBERS:
Michael T. (Mickey) Pablo - Chairman
Donald (Fred) Matt - Vice-Chairman
Elmer (Sonny) Morigeau, Jr.
Floyd W. Nicolai
Louis W. Adams
Laurence Kenmille
Robert L. (Bob) McCrea
Lloyd D. Irvine
Joe Dog Felsman
Pat Lefthand

Testimony Before the Senate Select Committee
on Indian Affairs
Hearings on Indian Economic Development
April 14, 1989
Submitted By Michael Pablo
Chairman of The Confederated Salish and Kootenai
Tribes of the Flathead Reservation

The Confederated and Salish and Kootenai Tribes are the sole owner of a tribal corporation known as Salish and Kootenai Electronics Incorporated. This tribal corporation was capitalized with tribal funds and has been in existence for four years. Although, the corporation was initially successful in obtaining by competitive bid a contract with the Department of Defense the company as of late has been unable to obtain any new contracts through the competitive bid process.

The tribal corporation has determined that in order for it to remain viable it needs to be certified for SBA's 8(a) program.

The recent amendments adopted in the 1988 Business Opportunity Development Reform Act (P.L. 100-656) are an encouraging sign from Congress that it is looking for ways to improve tribal participation in the 8(a) program. Despite the intent of the letter and the spirit of the amendments to encourage tribal participation letter and the spirit of the amendments to encourage tribal participation the regulations proposed by SBA on March 23, 1989 will impede tribal participation. They are, simply stated, too cumbersome.

Moreover, on a recent visit to the SBA office here in Washington, D.C. I was given to understand by SBA officials that it is their philosophy and interpretation of the 8(a) program that it is for the sole purpose of promoting individual Indian enterprises and not for the promotion of tribally owned enterprises. Our reading of the act discloses no such intent on the part of Congress to discourage the participation of tribally owned enterprises in the 8(a) program.

The basis for my understanding that SBA sees the 8(a) program as primarily for individually owned enterprises stems from fact, as represented to me by SBA officials, that eligibility for an enterprise turns not only on the status of the tribe but also on the status of the president or CEO of the enterprise and the composition of the board of directors.

According to SBA, in order for the tribal enterprise to be eligible for the 8(a) program the President or the CEO as well as a majority of the board of directors must use their particular individual right to participate in the 8(a) program so that the tribal enterprise can qualify.

serving on its board of directors. To do so means they may be required to use their individual right to participate in the 8(a) program. Tribal members are unwilling by and large to do such a thing with the knowledge that at some date in the future if they choose to leave the tribal enterprise and want to start an individually owned enterprise and to have it 8(a) qualified that opportunity is gone. This problem needs to be corrected if the 1988 amendments failed to clearly do so. It is most certainly SBA's position that the 1988 amendments did not change this unsatisfactory situation.

Thank you for the opportunity to present my Tribes' views on this subject.

Oversight Hearing on Indian Participation and Government Procurement Contracting

My name is Dennis Huber. I'm Director of the North Dakota Indian Business Development Center at United Tribes Technical College in Bismarck, North Dakota.

On behalf of the United Tribes Board of Directors, I am submitting the following written testimony on Indian participation in private business with emphasis on amendments to the "Indian Finance Act".

The North Dakota Indian Business Development Center's main responsibility is to provide management and technical assistance to new and existing businesses on or near Indian reservations in North Dakota. As Director of the NDIBDC I work with the individual entrepreneur in preparing a business plan and negotiating with private sector financial institutions for funding the plan.

All business plans prepared in our office are submitted to the BIA for financial consideration under the "Indian Finance Act", and the majority of the requests for assistance are in the form of business development grants (twenty-five percent). The remaining seventy-five percent of financial assistance in the form of direct loans has to come from the private sector.

Since local banks have to monitor the loan and are at risk for the largest part of the loan, it's difficult to get them to make "direct loans" (75%) without some type of guarantee on their loan participation because of jurisdiction and other problems. SBA has authority to guarantee this portion of the loan, but for some reason we haven't had any success in getting them to participate. Maybe they don't have adequate funding to participate. The BIA and SBA should negotiate a memorandum of understanding on SBA's participation in the BIA grant program. Two solutions that would alleviate this problem are:

(1) Establishing local Indian financial institutions in states that have large resident Indian populations. These banks would have a better

understanding of Indian people and their needs to establish businesses on reservations. They would be able to provide hands-on technical assistance to keep these businesses viable and profitable.

(2) Amending the "Indian Finance Act" to provide loan guarantee authority for the 75% direct loan participation of off-reservation banks. This would immediately open the door for business expansion on reservations. The banks collateral would be secured by a guarantee up to 90% of the bank's direct loan.

Another problem is the time delays in reviewing and approving a business plan which can run from 6 months to over a year. By the time the plan is approved, it has to be modified to make it work. For example, in the case of farm/ranch enterprises, the price of the cow may have increased by $300 which wouldn't work at all.

One solution to this delay in time would be to establish a review process outside the BIA that can work with the local financial institutions in negotiating and approving the business plans financial request. Again I would stress local monitoring of the businesses on a weekly basis to keep them viable and profitable. It would be more efficient to standardize the loan application procedure for all three loan programs (grant, direct, guarantee) under the "Indian Finance Act".

Another amendement for consideration is as follows:

(1) Add a statement to the "on or near" concept for establishing businesses that would include cities that have large resident Indian populations such as Rapid City, South Dakota and Bismarck, North Dakota. In certain areas there are more opportunities for successful businesses and some franchise corporations (Pizza Hut, Burger King) who will only locate in large population areas. Some of these corporations have minority set-asides for establishing businesses.

I would like to thank the Senate Select Committee on Indian Affairs for this opportunity to present our concerns on improving Indian participation in the business economic community.

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS
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SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
HEARING ON DEFENSE APPROPRIATIONS

The Turtle Mountain Indian Reservation is located in North Dakota and is one of the smallest in the United States, measuring 6 miles North to South by 12 miles East to West. It is probably the most densely populated as well, with over 15,000 tribal members residing on/or adjacent to the reservation. The area is plaqued with chronic unemployment, which averages over 65% during the winter months. The area is relatively unsuitable for agriculture. There is activity in the forest sector by some individuals who make a subsistance living and many individuals rely on seasonal work for their income. The biggest concern for the Tribe is the lack of job opportunities.

To address the high unemployment rate affecting the reservation area, an effort to enhance certain factors of the economic environment needs to be undertaken to allow for sustained controlled development and growth.

The Turtle Mountain Band of Chippewa have an elected Tribal Council. The Tribal Council has made the committment to making economic development the Tribe's number one (1) priority. The Tribal Council has also taken the first steps by funding economic development projects with interest income received as a land settlement. Meanwhile federal participation in economic development projects is still not sufficient to provide drastic changes in a short period of time.

The major goal of the Tribe is to do economic development activities which create jobs and job opportunities. There have been some very substantial developments by the Tribe as well, the success of the Turtle Mountain Manufacturing Company is of great benefit in assisting the improvement of the relatively poor economy that exists on the reservation. TMMC is a tribally owned and operated trailer manufacturing operation. They have been in business since 1979 and have marked growth since reorganization in 1982.

(2)

TMMC, located two miles west of Belcourt, has 135 full-time employees and had gross sales in the $13 - 18 Million range annually. The firm, which manufactures cargo trailers for the military, has a production and storage area of 110,000 square feet. TMMC is one of the largest employers on the Turtle Mountain Reservation.

The company qualified to become an SBA 8(a) contractor, and major military contracts were secured with the assistance of SBA and Department of Defense. The company is scheduled to graduate from SBA 8(a)'s program in September of 1990.

The Turtle Mountain Tribe is requesting DOD and SBA to enhance mechanisms which would include:

GRADUATION: Upon graduation from the SBA 8(a) program products which are under the 8(a) program should be graduated with the firm, instead of being utilized to start another company.

TRANSPORTATION: Price analysis using FOB destination criteria should be excluded from the competitive bid process. The company has been only minimally successful in competing in the open market for similar products. Geographic location places a 3-4% penalty on pricing to cover in-coming freight charges for materials. When solicitations for products are priced FOB Destination, the company's prices almost certainly become non-competitive since most final destinations are in the eastern third (1/3) of the U.S.

DOD POLICY: Change DOD's Policy that states: Products previously procured under the Small Business set-aside program will not be solicited under the Disadvantaged Small Business set-aside program (DSB). This restricts DSB procurements to new products and/or previously unrestricted buys.

Allow progress payments on contracts prior to first article test approval. To lock-in material prices, purchases must be made as early to contract signing as possible. Current regulations delay production start-ups by as long as 120-390 days causing serious price fluctuations.

Make available DOD Procurement Planning Data so companies can adequately plan for future contract possibilities.

With the success of TMMC, a joint-venture--a data entry firm has been started. In August 1987, Uniband Data Entry Corporation began operations. It anticipates eventually employing 100 to 200 people. The new company provides a data entry service. The operation serves clients in pulling information together, using a batch data entry system network with several work stations. Operators enter information provided on worksheets sent to Uniband by a contracted company. Accuracy of information is very important. 100 workstations and four network systems are in place.

Uniband's marketing projections included Buy-Indian contracts and SBA 8(a) contractor designation. But problems and other factors have made these two programs virtually useless. Under previous regulations, Tribal enterprises were listed third in priority preference for service contracts, behind the Blind/Severely Handicapped and the Federal Prison Industries. Congress has already changed the listing of preference, which now list Indian economic enterprises second only to the Blind and Severely Handicapped.

Unfortunately Uniband has been deprived access into SBA 8(a) program for the current moment. In regards to the SBA 8(a) Certification the Tribe has many recommendations for changes in dealing with Indian economic enterprises.

(1) Two Year Business Requirement: According to SBA 8(a) Application Requirements, the business has to be in business for two years before you can apply for SBA 8(a) program participation. Tribal economic enterprises should be exempt from this requirement.

(2) Indian Economic Enterprises: SBA does not understand the definition of tribally-owned economic enterprises and they give themselves a great deal of satisfaction with this. SBA must educate themselves in Indian law and Indian economic enterprise development or more importantly need to adhere to Tribal input or create a separate division to deal with qualifying Indian Economic Enterprises.

(3) Board Members: Tribal members who sit on management boards of Tribal economic enterprises must give up their future personal SBA 8(a) eligibiity. The Turtle Mountain Tribe would like this to change, Tribal members who sit on tribally-owned economic enterprises should not have to give up their future personal SBA 8(a) eligibility in order to qualify the firm for SBA 8(a) program participation, since they have no economic interest in the business.

(4) Affiliation: Joint-ventures in Indian Country basically denies SBA 8(a) program participation because of:

(a) Affiliation with big business problem potential; and

(b) Previous business experience, management, ownership, etc.

Tribal joint-ventures should not be denied accessibility to SBA 8(a) program participation if:

(a) The Tribe owns 51%; and

(b) The work is complete on the reservation and employ 90% Indian labor force.

(5) Management Agreements: SBA does not like management agreements & basically disqualifies any firms which have management agreements. The Tribe recommends management agreements should be acceptable for a limited period of time with control being transferred once the local capabilities are developed. Also, SBA should be the one to develop a model management contract especially for tribal economic enterprises.

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May 19, 1989

The Honorable Sidney Yates
Chairman, Subcommittee on
Interior Appropriations
B-308 RHOB
House of Representatives
Washington, DC 20515

Dear Chairman Yates:

This is a follow-up to my letter to you of April 28, 1989. Solicitor Ralph Tarr has submitted to your committee a supplement to his April 13, 1989, testimony which reports on the Government's participation in litigation on behalf of Indian interests. Once again, I have to respond because the report does not describe the history with which I am familiar. This letter addresses only those matters discussed by Solicitor Tarr with which I was personally involved.

The Solicitor states that "In no case during my tenure as Solicitor have I recommended a litigation position to the Department of Justice contrary to the guidance of our client." That statement should be compared with the following facts regarding the Pyramid Lake controversy. In 1988, the Bureau of Reclamation was requested by the Truckee-Carson Irrigation District (TCID), whose members irrigate lands in the Newlands Reclamation Project in western Nevada, to release water from Stampede Reservoir. TCID believed it was entitled to carry-over storage from an earlier irrigation season and claimed that it needed the additional water because of drought. On August 9, 1988, the Federal District Court in Nevada ordered the Secretary to release the water.

The Solicitor met with his staff about this issue on August 10 or 11, 1988. He started the meeting by inviting a discussion of reasons why the administrative action of the Department in denying the request to release water was defective. I suggested that a more useful approach from the Department's point of view would be to prepare affirmatively to defend the decision not to release water. The Solicitor eventually concluded the meeting by directing the attorneys to consult with the client agencies and prepare recommendations on whether an emergency appeal should be made. On the morning of August 12, attorneys and clients convened in the Solicitor's conference room. The Bureau of Reclamation's regional director and his staff in California participated by speaker phone. The Solicitor did not attend. By the end of the meeting, the Bureau of Reclamation and the Assistant Secretary for Indian Affairs, supported by a consensus of attorneys in three divisions of the Solicitor's Office concluded that the water should not be released and that the decision of the District Court should be appealed.

When we went to report our conclusions, we were informed that while we had been meeting, the Solicitor met with the Secretary and advised him to ask the Justice Department not to appeal the decision. Before hearing from the Justice Department on its response to the recommendation, the Secretary wrote to former Senator Chic Hecht and Congresswoman Barbara Vucanovich reassuring them that the Department would not oppose release of the water. The Justice Department later wrote to the Solicitor that the Solicitor General had approved an appeal. To my knowledge, neither the Secretary nor the Solicitor attempted to set aside the Solicitor General's decision. The Justice Department and the Pyramid Lake Paiute Tribe appealed. A decision is pending.

During the same period, the Solicitor again rejected a consensus among the Associate Solicitors for Indian Affairs, Conservation and Wildlife, and Energy and Resources that an adverse decision of the Nevada district court in another matter in the Pyramid Lake controversy should be appealed. The Justice Department rejected the Solicitor's recommendation that was adverse to the Indian affairs recommendation and the fish and wildlife interest and was based on a false assumption about the Bureau of Reclamation's management plans for the Newlands Project. The Justice Department adopted the position that had been originally recommended by the Solicitor's staff. A decision in that case is pending as well.

It is difficult to understand how Solicitor Tarr can suggest that he had an affirmative and active role in Wyoming v. United States. The trial of that case occurred before the Solicitor's tenure. I served as co-counsel in the trial at the request of the Justice Department. The Solicitor or the Associate Solicitor had nothing to do with the Government's position in the trial of the case. At the time the Government's position was being prepared for Supreme Court argument, the Solicitor's only involvement in the case of which I am aware was to request through Associate Solicitor Daugherty that we draft an alternative formulation of the reserved rights doctrine that essentially assumed the argument of the State of Wyoming against the federal interest. I declined the assignment. Instead I recommended to the Acting Assistant Secretary for Indian Affairs that a meeting be organized with the Justice Department attorneys in order to ensure that they were informed directly about the Indian affairs program's views in the case because I was not confident that they would be reported faithfully through the Solicitor's Office. At that meeting, Associate Solicitor Daugherty raised directly with the Justice Department representatives the Solicitor's view on the case strategy. The Justice Department did not adopt that view. It is incredible for the Solicitor and the Associate Solicitor to include themselves in thet statement that "We have successfully urged the Department of Justice to defend vigorously before the Supreme Court the 'practicably irrigable acreage' standard for Indian water rights adjudication."

One of the most important issues in reserved water rights for Indian tribes is the right to water to maintain treaty fisheries in the Pacific northwest. The methodology for quantifying the water for that purpose was for the first, and to date only, time tried in *Wyoming v. United States*. I was the attorney who prepared and presented the claim in trial with expert witnesses from the fish and wildlife service. When I was requested by clients and Indian tribes to meet to share the experience of the Big Horn trial and help prepare for the trials in the northwest, Deputy Solicitor Howard Shafferman informed me that I should not attend because the Solicitor believed that the Department's position on instream flow claims for Indian fisheries had not been resolved as a policy matter. That view is difficult to understand when the Congress has funded a longstanding U.S. Fish and Wildlife Service technical program that is considered state of the art on instream flows, and the Justice Department has filed instream flow claims approved by the Interior Department in stream adjudications westwide. Preventing attorneys from sharing their knowledge with clients and Indian tribes in defense of Indian claims hardly describes a policy of "attorneys being fully available to our clients."

Enclosed for your convenient reference are some background documents regarding the Pyramid Lake matter. If I can provide any further information to you, please do not hesitate to contact me.

Sincerely,

Enclosures

cc: Honorable Daniel K. Inouye Senate Select Committee on Indian Affairs

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

BIA.IA.0094

OCT 14 1988

Memorandum

To: Secretary

From: Solicitor

Subject: Newlands Project--Appeal of the bench and bottom land decision

The Solicitor General's staff has recommended that the Justice Department appeal the bench/bottom issue and not appeal the issue of the tribe's participation in future case-by-case proceedings to review bench/bottom land status in the Newlands Project (but with the understanding that the government's brief would support the principle that the tribe should be permitted to participate in further proceedings).

Our recommendation to Justice was that we not appeal the bench/bottom issue and appeal the issue of the tribe's participation. In reporting to the Solicitor General, Roger Marzulla concurred in our recommendation but also reported that the Appellate Section of the Lands Division and the Special Litigation Counsel assigned to the case at trial recommended appeal.

Our brief in this case is due to be filed on Monday, October 17.

Ralph W. Tarr

Ralph W. Tarr

cc: Under Secretary

+Disheroon
Rm. 7330
Main

[redacted]

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

LAND & NATURAL RESOURCES DIVISION
GENERAL
1988 MAY 24 PM 1:51

MAY 23 1988

BIA.IA.0094

Honorable Roger J. Marzulla
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Attn: Fred R. Disheroon

Re: United States v. Alpine Land and Reservoir Co., D-185-BRT (D. Nev.) (Your reference: MEF:FRD 227333)

Dear Mr. Marzulla:

On February 12, 1988, the Court in the referenced case entered a Final Order regarding the classification of bench and bottom lands on the Newlands Project. On April 11, 1988, the United States filed a notice of appeal of the Final Order with the United States Court of Appeals for the Ninth Circuit. The purpose of this letter is to request that your Department not pursue the appeal of the Final Order except for the issue of denial of standing to the Pyramid Lake Paiute Tribe discussed below.

In the Final Order, the court reiterated its objective in this case to have a starting point from which to determine water duties for bench and bottom land. Final Order 13. The court stated that the distinction between bench and bottom land is to be based on soil type, water holding capacity and water table. The court also stated that the evidence "supports a finding that a classification of bench lands and bottom lands is viable and justified for the Newlands Project with a water duty of one acre foot per acre more for the areas properly classified as bench lands." Id. 7.

Early in the proceeding, the court appeared to be persuaded that 50 years of project operations under the Truckee Carson Irrigation District ("TCID") would inform the court on this matter. Id. 7-8 (Quoting the court's Order for Reconsideration of September 11, 1986). When it turned out that TCID's record of water use during that tenure (Exhibit 6) did not correlate water

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use with bench and bottom lands, but described instead only a record of water usage, the court ordered the development of a reliable starting point for reclassification of bench and bottom land. Id. 11. After reviewing both TCID's testimony in the 1980 trial that there were 9,005 acres of bench land in the Project and Exhibit 6 in this proceeding, which stated that there were 16,133 acres of bench land (Order for Reconsideration 2-3), the court concluded that Exhibit 6 did not depict bench and bottom land classification (Remand Order 3). Following a hearing at which experts for the U.S. and TCID presented classification maps based on soil characteristics which the judge found unacceptable, he then decided in the Final Order to declare Exhibit 6 as the starting point for farm by farm classification of bench and bottom lands before a Water Master. Final Order 16.

We believe that an appeal of the adoption of Exhibit 6 as the starting point is inappropriate and unlikely to succeed for two reasons. First, the adoption of Exhibit 6 is solely for the purpose of having a starting point: no ultimate burden of proof is allocated in the order. This appears to be a legitimate exercise of judicial authority in light of the history of this case. Second, the matter in question is a factual issue that the appeals court will be reluctant to review, especially when the court has provided, along with the designation of Exhibit 6 as a starting point, a process for seeking classification based on soil characteristics and depth to water, rather than historic usage, as advocated by the U.S. In any event, the position of the United States that the current bench and bottom land designations are erroneous can be pursued before the Water Master in the case by case approach set out by the court, with the objective of seeking further district court review after a series of Water Master determinations favorable to the United States.

The United States, as trustee for the Tribe, has represented the interest of the Tribe in the water supply of the Truckee River diverted to supplement the water rights within the Newlands Project adjudicated in the Alpine decree. In the Final Order the court declared that:

> While the Pyramid Lake Paiute Tribe of Indians has an obvious interest in this action for declaratory relief involving the entitlement to thousands of acre feet of water divertible from the Truckee River and affecting flows to Pyramid Lake, the Paiute Tribe, despite inadvertent or thoughtless statements in earlier orders, will have no standing to initiate or oppose any petition to the Water Master to change the classification of lands in the Project as bench or bottom lands. A change in classification for a single farm unit will have an insignificant and legally non-existent effect on the rights of the Paiute Tribe. The interested parties in such a petition for reclassification are the farm unit owners and the Bureau of Reclamation. TCID is interested as a stockholder. It, and its Board of Directors, do have authority to investigate, consider and

> make recommendations relative to any such request prior to the initiation of formal proceedings before the Water Master.

(Emphasis added) Final Order 14.

We find the rationale of the court for denying the Tribe standing to be unconvincing and illogical. The Tribe, and the United States on its behalf, have been engaged in this portion of the Alpine case for three years precisely because of the cumulative effect of excess delivery of water to the Newlands Project. The dispute over land classification alone involves approximately 8,000 acre feet of water. The court's premise is that the Tribe has no legitimate role in reclassification because any one petition for reclassification will have no measurable impact on asserted interests of the Indian Tribe. The effect of the court's order is to exclude the Tribe from the only proceedings now available to challenge the bench and bottom land classification. We disagree strongly, and defer to your views on the best means of seeking correction of this portion of the order, whether by appeal or amicus brief.

If you have need of further information about this matter please contact Dennis Daugherty (343-9401) or Tom Sansonetti (343-5757) of my staff.

Sincerely,

Howard K Shafferman

for Ralph W. Tarr
Solicitor

BIA.IA.0094

Memorandum May 24, 1988

To: Files

From: Assistant Solicitor--Branch of Water and Power, DIA

Joseph R Membrino

Subject: Alpine bench/bottom land no appeal recommendation

On Thursday, May 19, 1988, Associates and staff of E&R, IA and C&W met with the Solicitor and Deputy Solicitor to discuss the Department's position on the appeal of the court's decision on bench and bottom land classification in the Newlands Project. A draft recommendation for appeal had been discussed at an earlier meeting of the divisions with the Deputy Solicitor. At that meeting the Associates reported their clients' recommendations for appeal: BOR through Regional Director Dave Houston opposed appeal, BIA through Assistant Secretary Ross Swimmer supported appeal, and the FWS was neutral on appeal.[1]

Prior to the meeting with the Solicitor on May 19, the Associates and staff for E&R and IA met to review a draft appeal recommendation. Based on my research and analysis of the Final Order and the history of the case, a consensus emerged that the case should be appealed. A draft of the recommendation was presented to the Solicitor and the Deputy Solicitor before the May 19 meeting. At the meeting, the consensus was also reported but the Solicitor stated that he was opposed to appeal. One of the bases for his opinion was that there was an adequate process for determining bench and bottom land on a case by case basis consistent with the court's Final Order. When informed that reports form BOR were that there was no intention on the part of BOR to engage in that kind of affirmative action, the Solicitor disagreed with the report and said no such decision had been made. However, Regional Director Dave Houston's April 22, 1988 memorandum to the Commissioner states:

> this appeal should not be filed. I feel that the courts (sic) decision has given stability to the issue and that an appeal will only cause a further drain on both the resources of the district and the those of the United States, particularly the Bureau of Reclamation. I feel those resources could be better utilized in implementing

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[1] FWS appears persuaded that the Department is committed to obtain necessary water for the endangered fishery affect by the Project even if the Department's OCAP did not accomplish that objective. The Solicitor has expressed the view in meetings with the Under Secretary that if the OCAP did not succeed in avoiding jeopardy to the endangered species, the Secretary had no further obligation to take action to avoid jeopardy to the species. This conclusion is not endorsed by anyone on the Solicitor's office staff to my knowledge.

> conservation measures to improve the efficiency of the project. I do not feel that any practical gains can be made by pursuing the appeal.

In a follow up conversation on May 23, 1988, with BOR, the Newlands Project Manager stated that it was his understanding that BOR has no intention of affirmatively seeking to revise the map on a case by case basis to make it consistent with the criteria that BOR had asserted should be used to differentiate between bench and bottom land. The Project Manager stated that with regard to any parcel over which there would be contention between parties, "It would be a formidable problem, time consuming, with the need for a lot of manpower." The Bureau does not intend to examine Exhibit 6 before the Water Master case by case to bring it into conformity with the BOR criteria

The Project Manager also agreed that as the case now stands the Water Master in each individual case will have to decide what the criteria are going to be for distinguishing bench and bottom land. Those criteria will have to be consistent project wide. The Water Master has reported that he has no hesitation about going to the court to get criteria established. But going through that process will only result in using a clumsy, piecemeal proceeding to do what the proceeding before the court itself had been intended to accomplish.

It should be noted that in discussions with TCID, the BOR has learned that TCID is establishing a process in which the farmer who wants his land reclassified will make a presentation to TCID first before going to the Water Master in order for TCID to make its own evaluation and inform the Water Master by way of a recommendation about how the reclassification petition should be disposed of. TCID's process for reclassification would require an SCS soil survey and water table measurement. In addition, TCID is calling for historical cropping pattern data. (Both The Project Manager and I agree that the latter criterion is irrelevant.) BOR itself said it intends not to use TCID as a matter of process to present its position on reclassification petitions, contrary to recent newspaper reports in the Lahontan Valley News.

In implementing the Final Order, the BOR and TCID are only 80 acres apart in revising Exhibit 6 to include as bench land the areas agreed upon by the BOR and WRD maps. BOR shows 80 acres more of bench land than does TCID.

DRAFT

For 2:00 pm meeting
May 19, 1988
Tom Sansonetti
Lou Mauro
Dennis Daugherty
Howard Shuffman
Chuck Hughes
Dave Watts
Peter Raynor

BIA.IA.0094

Honorable Roger J. Marzulla
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Attn: Fred R. Disheroon

Re: United States v. Alpine Land and Reservoir Company, D-185 BRT (D. Nev.)

Dear Mr. Marzulla:

On February 12, 1988, the Court in the referenced case entered a Final Order regarding the classification of bench and bottom lands on the Newlands Project. On April 11, 1988, the United States filed a notice of appeal of the Final Order with the United States Court of Appeals for the Ninth Circuit. The purpose of this letter is to request that your Department pursue the appeal of the Final Order and that you consult with us as you prepare the specific grounds for the appeal.

In the decree entered by the court in this case in 1980, the court held that annual farm headgate water entitlements within the Newlands Project are 3.5 acre feet per acre for bottom land and 4.5 acre feet per acre for bench land. Because efficient implementation of Operating Criteria and Procedures (OCAP) for the Newlands Project required the identification of the bench and bottom land, the referenced proceeding was undertaken. The Truckee-Carson Irrigation District (TCID or District) took the position that the bench and bottom lands should be identified based on historical deliveries of water to Project land. The United States and the Pyramid Lake Paiute Tribe disagreed.

On September 15, 1986, the court entered its order and decided that:

> TCID's classification of bench and bottom lands which has been computerized and is reflected on Exhibit 6, received in evidence in this case shall be the starting point for any future reclassification of the bench and bottom lands on the Newlands Project and that any such reclassification and/or adjustments in water deliveries must be done on an individual farm basis in a proceeding commenced before this court's Water Master as provided by the Administrative Provisions of the Final Decree . . . and that either the

> owner of the farm, the Bureau of Reclamation, or the Pyramid Lake Paiute Tribe of Indians may initiate such a proceeding. United States v. Alpine Land & Reservoir Co., D-185-BRT (D. Nev.) (Order September 15, 1988).

The court was persuaded that project operations over the last fifty years were a reliable indicator of bench and bottom land. In the Finding's of Fact and Conclusions of Law accompanying the Order, the court found that "Exhibit 6 reflects the TCID classification of the project bottom lands and the project bench lands." Id. at 3. The court further stated that its intent in issuing the Alpine decree in 1980 was that:

- --TCID's land classification be the starting point in determining water duties,
- --disagreements about classification should be brought to the Water Master and notice given to the individual farmer and TCID,
- --reclassification of bench and bottom land by the Water Master should be based on all relevant factors such as water tables, soils and theri water holding capacities, farming practices, and the types of crops being grown,
- --disagreements about the reclassification decision could be appealed to the court.

Id. at 4.

The court also stated that it expected land classification to be relatively stable and permanent. Id. 5.

Immediately following the court's decision, the Tribe and the Unted States moved for reconsideration. The court acceded to the motion because there was evidence that Exhibit 6 did not describe bench and bottom land correctly.[1] In 1980, TCID had submitted evidence and testimony to establish that there were 9,005 acres of bench land in the Project. But at the time of this trial in 1986, the evidence of TCID was that there were 16,133 acres of bench land. This represents an increase of 7,128 acres in a six year period. But other evidence (Exhibit 38) stated that between 1970 and 1986 less than 500 acres had been the subject of requests for increase in water duty. Following rehearing, the court found that:

> The United States presented uncontradicted evidence that Exhibit 6 did not represent an historic classification of lands in the Newlands Project as bench or bottom lands. Exhibit 6 reflected TCID's historic water allocations to

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[1] Exhibit 6 was prepared by the Bureau of Reclamation witness who prepared a computerized map from the water delivery records of TCID. The records were of average water use between 1925 and 1932 (years of full water supply in the Project) modified by reductions in water deliveries ordered by TCID in 1977 that deliveries to bench land be limited to 4.5 acre feet per acre annually. Remand Order 2-3. TCID then verified that the map accurately displayed the TCID data.

> project lands based ultimately upon the average uses of water on such tracts during the full water years from 1925 to 1932. . . .TCID never made land or soil-based classification of bench or bottom lands in the project. . . .The water allocations provided by TCID and currently depicted on Exhibit 6 were not based on bench and bottom land clsssifications. The court's earlier conclusion that Exhibit 6 should be a guide in classifying lands is withdrawn. Remand Order 2-3 January 27, 1987.

In the Remand Order, the court directed the Secretary to prepare and submit a revised initial designation of bench and bottom lands. In doing so the Secetrary was ordered to take into account considerations that were inherent in the Alpine decree:

> (a) The distinction between bench and bottom lands must be a broad, general distinction between land having porous soils with low water tables and low water holding capacities as compared to lands with more impervious soils, higher water tables, and higher water holding capacities. The court recognizes that the basic criteria identified by the Bureau in its report filed herein as Exhibit 1 generally reflect this distinction;[2] (b) the classification of lands as bench and bottom for allocation of water duties must be designed for considerable permanence and stability. The Secretary should take into account the past general designation of such lands in the project as reflected by the 3980 contour line. . . . (emphasis added) Id. 4.

In the Final Order, the court reiterated that the distinction between bench and bottom land is to be based on soil type, water holding capacity and water table. The court remained persuaded that the evidence "supports a finding that a classification of bench lands and bottom lands is viable and justified for the Newlands Project with a water duty of one acre foot per acre more for the areas properly classified as bench lands." Id. 7. The court went on to evaluate the Bureau of Reclamation's revised bench and bottom land map and a map submitted on behalf of TCID (WRD map).

The court found the Bureau map to be deficient because the court concluded that the map treated the 3980 contour line as absolute, relied too heavily on depth to water, and reclassified all water righted, and currently unirrigated land of the Fallon Indian

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[2] The criteria in Exhibit 1 state that: "first, if the available water holding capacity of the soil is eight inches or greater in the five foot soil profile, the soil is considered bottom land. Second, if the water table is within six feet of the soil surface for 150 or more days during the irrigation season, the soil is considered bottom land. If neither of these two conditions apply, the soil is considered bench land." United States Submission of Revised Bench and Bottom Land Map for the Newlands Reclamation Project, July 23, 1987.

Reservation as bottom land. Id. 7-10. The court rejected the WRD map summarily because of the admittedly unscientific basis used to increase the bench land total by 6,000 acres. Id. 10.[3]

In the Final Order, the court reiterated its objective in this process to have a starting point from which to determine water duties for bench and bottom land. Id. 13. Early in the proceeding, the court appeared to be persuaded that 50 years of project operations under TCID would inform the court on this matter. Id. 7-8 (Quoting the court's Order for Reconsideration of September 11, 1986). When it turned out that TCID's record of water use during that tenure (Exhibit 6) did not correlate water use with bench and bottom lands, but described instead only a record of water usage, the court ordered the development of a reliable starting point for reclassification of bench and bottom land. Id. 11. Even though TCID's testimony in the 1980 trial that there were 9,005 acres of bench land in the Project was inconsistent with Exhibit 6 (16,133 acres of bench land) (Order for Reconsideration 2-3) and the court concluded that Exhibit 6 did not depict bench and bottom land classification (Remand Order 3), the court decided in the Final Order without any basis in fact to declare Exhibit 6 as the starting point for reclassification of bench and bottom lands. Final Order 16.

The process for the use of Exhibit 6 as a starting point for reclassification is inconsistent with judicial economy and places an unfair burden on individual water users. Because Exhibit 6 does not represent a description of bench and bottom lands, it is irrational for the court to use it as a staring point in a process to hear petitions for reclassification of Project lands. The process could only make sense if the point of departure for reclassification were not Exhibit 6 but a data base that was consistent and established with criteria that are related to distinctions between bench and bottom land. We are persuaded that the Bureau's revised bench and bottom land map meets that standard. But in the Final Order, the Water Master is being instructed to repeat time and again with individual farmers what was intended to be achieved efficiently and comprehensively in this proceeding. Judicial economy is not served by this result. Nor is this Administration's policy of avoiding burdensome intrusions into the enjoyment of indvidual property rights. Now individual farmers, not TCID, will be at risk of summons before the Water Master and then on appeal to the court to defend claims that Exhibit 6 does not properly describe their land.

We are also concerned about the court's amendment of the process by which petitions for reclassification are to be heard. In the Final Order, the Pyramid Lake Paiute Tribe is denied standing to participate in petitions for reclassification. The rationale of the court for denying the Tribe standing makes no sense. The court's premise is that the Tribe has no legitimate role in reclassification because the process works on a case by case basis with aggregation of petitions specifically prohibited. Id. 14. Because any one petition for reclassification will have no measurable impact on asserted interests of the Indian Tribe, the Tribe is somehow held to have no interest in the cumulative impacts of the reclassification process. The court's approach undermines one of the principal objectives of the water conservation efforts of the Department in the OCAP and this proceeding; maintaining the Carson River as the primary source of water for the Newlands Project and confining the Truckee River as a supplementary source of water so that water will be conserved for the Pyramid Lake fishery. See Final Order 5; Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C 1973); 43 CFR 418.

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[3] Although the court concluded that the experts who testified in support of the Bureau and WRD maps suffered diminished credibility (Id. 10), it found that, because the two maps agreed on the designation of 2000 acres as bottom land, that acreage should be classified as bottom land.

We are persuaded that the Bureau's map correctly applied the court's criteria. We are further persuaded that the process set up by the court for review of petitions for reclassification is improper, and that the denial of standing to the Pyramid Lake Paiute Tribe cannot be justified. Given the integral importance of bench and bottom land designations to overall Project diversions and the administration of OCAP, the Department needs timely and comprehensive resolution of this issue, not the piecemeal process with which the Final Order now burdens the Department, the water users, and the court. Accordingly we recommend appeal.

For further information about this matter please contact Joseph R. Membrino of my staff (Phone 343-6967).

Sincerely,

Ralph W. Tarr
Solicitor

cc: E & R
C & W
Reg Sol PSW

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Note To Reviewers
From Assistant Solcitor, Branch of Water and Power, DIA
Subject: Draft letter to Senator Reid about Stampede releases.
Date 9/12/88

To complete the story on the Stampede releases we may consider advising Senator Reid that although the Ninth Circuit declined to enjoin the release of the Stampede water, an appeal has been taken by the tribe in which the United States has conditionally joined. The Court has established an expedited briefing schedule which requires the Pyramid Lake Paiute Tribe and the United States to file briefs on September 14. The United States' decision on whether to appeal needs to be made early this week. If the appeal by the tribe and/or the United States is successful, the probable remedy would be that water released this year would be deducted from diversions to the Newlands Project next year. A final decision by the Court is expected before 1989 diversions to the Project begin.

U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General
Washington, D.C. [illegible]

AUG 1 8 1988

Honorable Ralph W. Tarr
Solicitor
Department of the Interior
Washington D.C. 20240

Dear Ralph:

I am writing to inform you of events that have transpired since my receipt of your letter recommending against appeal, and our discussion of, Pyramid Lake Paiute Tribe of Indians v. Hodel, Secretary of the Interior and Truckee-Carson Irrigation District (D. Nev. Civil No. R-85-197 BRT; 9th Cir. Nos. 88-15116, 88-15117), on August 15.

On August 15, 1988, the Office of the Solicitor General, after considering your recommendation and that of this Division, authorized us to support the emergency motion of the Pyramid Lake Paiute Tribe of Indians to stay the district court's August 9 order. That order requires the Secretary of the Interior to release 21,435 acre feet of water from Stampede Dam for diversion into Truckee Canal for use on the Newlands Project. We were also authorized, conditionally, to prosecute an appeal of the district court order.

On the evening of August 15, a telephonic oral argument was held with Ninth Circuit Judges Noonan and Kozinski. Later that night, the Court of Appeals issued an order setting aside its previous temporary stay of Friday, August 12. As a result, the district court's August 9 injunction has been restored to current force. In a separate order issued on August 16, 1988, the Court of Appeals issued an expedited briefing schedule. The opening brief is due September 14, 1988. Oral argument will be held in November 1988 in San Francisco.

Although the water sought by TCID will be released from Stampede Dam by the time this appeal is heard, we do not believe that this case will become moot, or that our appeal should be withdrawn. During the telephonic argument, TCID made the representation that, if Judge Thompson's order were reversed on appeal, it would replace the water taken pursuant to that stay if the presence of that water in Stampede made a spawning run possible for the Pyramid Lake fish. Thus, a ruling by the Court of Appeals holding that Judge Thompson misinterpreted the Interim Operating Criteria could provide the basis for replacing critically needed water for the endangered species.

As I noted earlier, when the Solicitor General authorized this Division to seek a stay, he also "conditionally" authorized an appeal. By taking that type of action, he has preserved your opportunity to request that we not join the Tribe as appellants, now that the stay has been denied. Absent such a request, it is my understanding that the Solicitor General does not intend to consider the matter further, and the appeal authorization will stand.

Please let me know if you wish to have this matter reconsidered by the Solicitor General, or if I can be of any other assistance to you in this matter.

Sincerely,

Roger J. Marzulla
Assistant Attorney General
Land & Natural Resources Division

Note To Dennis Daugherty
From Joe Membrino /S
Re: Effect of *TCID v. Secretary* on Stampede releases
August 17, 1988

At page 23 of the TCID's opposition to the stay of the Stampede order, TCID disputes the government's argument that to release Stampede water under the circumstances of this case would conflict with the court's order in *TCID v. Secretary* that all of the Stampede waer should be used exclusively for the endangered species in Pyramid Lake.

TCID further states that the government is making this argument for the first time at this stage of the case.

In my view, the reason *TCID v. Secretary* is applicable here is because the 1987 credit was not intended to provide any carryover storage credit into 1988 and the 1987 credit is not based on an exchange of water rights as was the case in 1973. (As you know, the Stampede credit provision was not implemented in the 1973 OCAP because TCID refused to comply with those OCAP. Other interim OCAP had no credit provisions.) The credit would not run afoul of *TCID v. Secretary* if an exchange of water rights were involved; that is if TCID were being required by the OCAP to forgo water use to which it was entitled in aid of conserving water for the fishery. That is the situation contemplated in the 1973 OCAP but that is not the situation contemplated by the 1987 OCAP. Our OCAP for 1987 were designed to ensure that operation of the diversion criteria at a 215,000 acre-feet storage level would not prevent the water users from their entitlement to divert 362,000 acre-feet for irrigation. Thus the 1987 "credit" was different from the 1973 credit. Moreover, the 1987 credit did not become operative in 1987 because, as correctly predicted by the BOR, the water users received their full entitlement under the 215,000 acre-feet target storage level.

Since there is no exchange that took place involving Stampede water in 1987, there is no right in TCID or the water users to any Stampede water. In fact TCID simply is claiming the right to use water from Stampede on a theory that it is entitled to divert Truckee River water until the storage level reaches 290,000 acre-feet. We disagree that TCID has that right; or that TCID has the right to Stampede stored water. Thus in the absence of an exchange, the rule of *TCID v. Secretary* is that water stored in Stampede is exclusively for the fishery.

The argument is raised at this stage of the proceedings becuase until Judge Thompson's reasoning and order were published, we had not had a conflict between court orders.

BIA.IA.0094

AUG 17

NEWLANDS PROJECT ISSUES SUMMARY

1. August 8, 1988 letter from DOJ to SOL
   Requests a meeting for briefing and policy guidance on:
   - --objections to final OCAP
   - --progress on negotiations
   - --status of TCID as party in OCAP hearings
   - --negotiation of long term O&M contract with TCID
   - --role of OCAP Task Force in coordinating litigation
   - --Tahoe Dam repair litigation
   - --Stampede Reservoir expedited appeal
   - --claimed exemption of Reno/Sparks sewage treatment land application plan from Orr Ditch Decree and state engineer administration
   - --position on appeal of the bench/bottom land decision
   - --position on compliance with legislation directing Secretary to complete irrigation development of Fallon Indian reservation

2. Proposed Contract among BOR, TCID, and Lahontan Hydropower, Inc., for construction, O&M of a new powerplant at Lahontan Dam. Issues include:

--whether to approve any contract given the litigious relationship between the Department and TCID at this time.

--the criteria in the agreement for water releases for power generation and whether they comport with existing case law and regulation.

3. Brief of United States in Court of Claims seeking affirmance of lower court dismissal of TCID's suit for damages for loss of hydropower revenues when the Department promulgated regulations in 1967 to limit releases of water from Lahontan Reservoir only for irrigation or precautionary drawdown. Brief is due to be filed this week.

4. EPA Truckee River Water Quality Resolution Strategy. EPA has taken the initiative to resolve the Truckee River water quality litigation involving Reno, Sparks, EPA, the State, the Pyramid Lake Tribe, EDF, Sierra Club and Washoe County. The focus of this initiative is the areawide waste water treatment plan and its implementation. The effluent disposal now has a direct effect on water quality in the lower Truckee River and Pyramid Lake. One element of the negotiation strategy has been to consider applying treated effluent to Lahontan Valley wetlands.

5. Transfer of unused water rights to wetlands.

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

AUG 16 1988

Memorandum

To: Secretary

From: Solicitor

Subject: Newlands Project/Stampede Reservoir

On Monday, August 15 at 7:00 p.m. the 9th Circuit held a teleconference to hear arguments on the Pyramid Lake Paiute Tribe's emergency motion to stay releases of water from Stampede Reservoir to the Newlands Project.

The Justice Department informed the court at the hearing that it joined in the appeal of the district court decision and in the emergency motion of the tribe.

The court heard arguments for one and one-half hours. The court finally was persuaded that the release of water would not result in irreparable harm because the TCID had taken the position in its opposition to the emergency stay that the amount released could be deducted from its entitlement next year if TCID were found not to be entitled to the carryover credit.

Shortly after the conclusion of the argument, the court notified the tribe's attorney that the stay would be lifted and that an expedited briefing schedule would be established for the appeal. The court appears intent on deciding this matter in advance of the 1989 irrigation season and the spring spawning run (should one occur) so that if the district court is reversed, then the 21,000 acre feet of water can be timely deducted from diversions to the Newlands Project.

While the Justice Department did not agree with our recommendation against appeal of the district court decision, the stay has been lifted and the water that the farmers had been seeking for use this year will be available to them. The court lifted the stay apparently because it assumed that the water can be recovered by deducting from the irrigators' diversion entitlement next year if it rules in favor of the tribe and the government on appeal.

Ralph W. Tarr

Ralph W. Tarr

cc: Under Secretary

STAMPEDE UPDATE AUGUST 16, 1988

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Shortly after the conclusion of the argument, the court notified the tribe's attorney that the stay would be lifted and that an expedited briefing schedule would be established for the appeal. The court appears intent on deciding this matter in advance of the 1989 irrigation season and the spring spawning run (should one occur) so that if the district court is reversed, then the 21,000 acre feet of water can be timely deducted from diversions to the Newlands Project.

This report is based on information received from the tribe's attorney and the Department of Justice.

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

August 12, 1988

Mr. Roger J. Marzulla
Acting Assistant Attorney General
Land and Natural Resources Division
Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Marzulla:

Re: Pyramid Lake Paiute Tribe of Indians v. Hodel,
CV-R-85-197 BRT (D.Nev.)

The Secretary has asked me to convey this Department's recommendation against an appeal of the Order entered August 9, 1988, in the above-cited case. In the Order, District Court Judge Thompson found that the Truckee Carson Irrigation District is entitled to a release of 21,435 acre feet of water stored in Stampede Reservoir. The Judge concluded that that water represented a carry-over credit in Stampede for the irrigation users, a credit which was accrued in 1987 and could be properly requested in 1988.

Although the matter of the proper operation and management of the Newlands Project is of utmost importance to the Department, we do not believe that it is appropriate to appeal the Judge's Order in this case. We take this position because a careful review of the Order demonstrates that it is not clearly erroneous on either the facts or the law. Further, we are informed by client agencies that there likely will be minimal to no impacts from the water release ordered by the Judge. Most importantly, we do not believe that this Order will jeopardize the case-in-chief or the implementation of final operating criteria and procedures (OCAP) for the Newlands Project.

We must conclude that the August 9 Order is a reasonable reading of the record in this case. The Judge bases his conclusion as to the existence of a carry-over credit for the District on the historic practice of the Bureau of Reclamation in allowing and recognizing such a credit in operating criteria since 1973. While the United States had argued that a change in that practice was effected in the 1987 OCAP, the Court could find no clear evidence in the administrative record of that change, or any evidence that users were notified of any such change.

Therefore, we do not believe that we have a substantial probability of success in convincing the appeals court that the Judge was wrong on the facts or the law.

Further, the Fish and Wildlife Service indicates that the impacts of the ordered water release likely will be minimal to non-existent on fish and wildlife resources and therefore will not affect the Service's "no jeopardy" opinion on the permanent OCAP. The Service suggests that impacts in subsequent water years are speculative at best.

In addition, according to Bureau of Reclamation project managers, the ordered release will have no impact on Bureau of Reclamation operations in the Newlands Project, either under the interim or final OCAP. In fact, Judge Thompson was careful to indicate in two places in his Order that it does not represent a finding or indication as to any conclusions reached in his consideration of the proposed permanent OCAP. As so limited, the Order does not jeopardize in any way the Government's position with regard to the issue of carry-over credit in the final OCAP.

Rather than appealing this Order, which arises in a factual setting in which the Government has failed to provide clear articulation of its intention, we believe that it is preferable to seek adoption of the final OCAP, which the Order clearly understands specifically eliminates any carry-over storage credit in the future. The proposed final OCAP will be before the same Court this coming November. Appeal of the Order may be counterproductive to our ultimate goal of convincing the Court to adopt those OCAP over the objections of other litigants.

Therefore, we recommend against appeal of Judge Thompson's August 9, 1988, Order in this matter.

Sincerely,

Ralph W. Tarr

Ralph W. Tarr
Solicitor

AUG 12 '88

NEWLANDS PROJECT STORAGE UPDATE

--Tribe is filing an emergency appeal today in the 9th Circuit.

--As of August 8 there were approximately 46,400 acre-feet of active storage in Lahontan Reservoir. Current releases are 844 cfs or 1600 acre-feet per day.

--On June 7, 1988, TCID declared that water users would receive a limit of 70 percent of normal head gate deliveries and that the irrigation season for 1988 would end on September 15 or when Lahontan Reservoir storage reaches 10,000 acre-feet, whichever occurs first.

--The Lahontan supply will last until August 29 exclusive of the 10,000 acre-feet.

--The Stampede deliveries claimed by TCID and ordered to be delivered are in addition to what TCID anticipated would be available in the 70 percent water year.

--Evaporation losses from Lahontan Reservoir are higher than in the upstream reservoirs which are at cooler elevations and do not have the shallow profile and broad surface area of Lahontan.

--The release of the 21,435 acre-feet of water ordered by the court from Stampede Reservoir will not be completed until September 10 because the needle valves of Boca Reservoir through which the Stampede water must pass are malfunctioning. Boca can release only 280 cfs or 560 acre-feet per day. To extend the season for ten days we have to relase 30 days in advance.

--The conveyance time for water between Stampede and Lahontan Reservoirs is approximately 2.0 days.

--The water shortage occasioned by the drought is affecting the Project farmers principally by reducing the number of alfalfa cuttings for this season. All cropping decisions were made with full information that there would be a 70 percent supply; TCID was not counting on the Stampede water when it made its decision to limit water deliveries to 70 percent of head gate requirements.

There is no water right (Alpine decree) for minimum pool in Lahontan.

--The timing of the releases from Stampede as a practical matter appears to be premature because there is still water available in Lahontan. There is no basis on which the court has to order the immediate release of water given the supply in Lahontan. The 9th Circuit could have more time to consider the appeal by holding up the release schedule until Lahontan is drawndown.

THE SECRETARY OF THE INTERIOR
WASHINGTON

Chron
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August 12, 1988

Honorable Chic Hecht
United States Senate
Washington, D.C., 20510

Dear Senator Hecht:

I have personally reviewed the matter you and Congresswoman Vucanovich raised with me concerning whether or not to appeal Judge Thompson's August 9 Order releasing 21,000 acre feet of water from Stampede Reservoir for diversion to the Newlands Project. In view of the record and history involved, I believe the Judge's Order should not be appealed.

I have been advised by the Solicitor that Judge Thompson's order was not unreasonable based on the record existing in this matter. A review of that record and the facts relevant to this case, indicate that it was appropriate for the Court to find a historic agency practice that supports the Order. While the United States argued that the practice has changed, the court found insufficient evidence of such a change in intent or direction in the record before it.

I have also been advised by the Fish and Wildlife Service that the ordered release likely will have only minimal, if any, impacts on fish and wildlife. Project managers in the Bureau of Reclamation further advise me that the release should have no significant impact on the operation of the Newlands Project.

The August 9 Order addresses for this year alone one issue within the many issues arising from the operation of the Newlands Project. This issue and many others will be finally decided for future years when the court rules on the proposed permanent operating criteria and procedures for the Project.

Those criteria and procedures will be before the same court in November. It appears to be the better course is not to appeal this Order, which has a sufficient basis in the record, and focus instead on resolving all remaining questions in the final operating criteria and procedures. For this reason, I have directed the Solicitor to inform the Department of Justice that the Department recommends against an appeal of this matter.

Sincerely,

Don Hodel

THE SECRETARY OF THE INTERIOR
WASHINGTON

August 12, 1988

Honorable Barbara Vucanovich
U. S. House of Representatives
Washington, D.C., 20515

Dear Congresswoman Vucanovich:

I have personally reviewed the matter you and Senator Hecht raised with me concerning whether or not to appeal Judge Thompson's August 9 Order releasing 21,000 acre feet of water from Stampede Reservoir for diversion to the Newlands Project. In view of the record and history involved, I believe the Judge's Order should not be appealed.

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Sincerely,

Don Hodel

LAHONTAN VALLEY NEWS
FALLON NEVADA
August 16, 1988
Front Page

Another setback for local farmers

By Renee Thompson
Staff Writer

Churchill County farmers endured yet another setback late last week after acquiring 21,000 acre-feet of water when a federal appeals court in San Francisco ordered a halt to the water releases.

The 9th U.S. Circuit Court of Appeals in San Francisco late Friday ordered a halt to the water, granted earlier in the week by U.S. District Judge Bruce Thompson in Reno.

Thompson's order, the result of an action brought by the Truckee-Carson Irrigation District, gave the District the right to divert 21,425 acre-feet of water which is presently stored in the Stampede Reservoir, about 23 miles west of Reno. In the 24 hours that Stampede water was being released, about 600-acre-feet went down the river.

In allowing the release, Thompson agreed with TCID that the reserves legally repay water that Fallon farmers didn't use in 1987. That decision is important this year, as the drought continues to lower crop yields and income for local farmers.

The federal appeals court took action Aug. 12 to stop the releases however, after reviewing a motion filed by the Pyramid Lake Paiute Indian Tribe, which contends that previous federal court decisions and decrees don't allow such a year-to-year carryover.

Additionally, the tribe contends that a 1982 case also prohibits the use of Stampede Reservoir for anything other than fish habitat in Pyramid Lake.

The tribe's attorney, Robert Pelcyger, previously stated that the water is there for the benefit of the endangered cui-ui, and that taking 25 percent of the Stampede water now could make the difference between having a spawning run or not next year.

The release of the 21,000 acre-feet of water was expected to take a month and assist TCID in meeting its goal of sending at least 70 percent of its normal-year-irrigation flow to the project.

Interior Secretary Don Hodel agreed Friday not to appeal Thompson's decision to release the water to Fallon farmers, at the urging of U.S. Senator Chic Hecht and Congresswoman Barbara Vucanovich.

Interior's initial position was that the water should be saved to benefit Pyramid Lake and its endangered fish, even though there was no significant spawning run of fish from Pyramid Lake this year.

Hecht contacted the Department of Justice and the Interior Department to argue that Interior should not appeal, so the water could continue to flow to the farmers and indirectly, to the Stillwater Wildlife Management Area.

Hodel said he has been advised by the Fish and Wildlife Service that the release likely will have only minimal, if any, impacts on fish and wildlife.

TCID attorney Lyman McConnell said Monday he is "pleased" with Interior's decision. "It (Interior) says that Thompson's decision is not unreasonable."

Dave Matley, District board member said earlier he hoped the District might be able to squeeze one last irrigation out of the system in October for farmers' winter grain crops, which could be lost unless they get that additional irrigation provided by the release.

According to McConnell, the federal appeals court set a closed hearing Monday, 4 p.m., in San Franciscoisco for further arguments on the matter.

WASHINGTON (UPI) _ INTERIOR SECRETARY DONALD HODEL RECOMMENDED FRIDAY THE FEDERAL GOVERNMENT LET STAND A RULE BY A RENO FEDERAL JUDGE TO RELEASE MORE THAN 21,000 ACRE-FEET OF WATER FROM STAMPEDE RESERVOIR IN THE SIERRA TO DROUGHT-STRICKEN AGRICULTURAL AREAS IN THE CARSON VALLEY.

THE WATER FROM THE RESERVOIR WILL GIVE FARMERS ABOUT 70 PERCENT OF THEIR NORMAL IRRIGATION FLOW.

U.S. DISTRICT JUDGE BRUCE THOMPSON RULED AUG 4. THAT THE TRUCKEE-CARSON IRRIGATION DISTRICT HAS THE RIGHT TO RELEASE 21,435 ACRE-FEET [illegible]. INTERIOR DEPARTMENT LAWYERS HAD PLANNED TO APPEAL THE RULING.

STAMPEDE RESERVOIR WATER IS ONE OF MANY ISSUES INVOLVING THE TRUCKEE RIVER BEING FOUGHT IN COURT.

HODEL TOLD REP. BARBARA VUCANOVICH AND SEN. CHIC HECHT, R-NEV., IN A LETTER THAT THERE IS A SUFFICIENT LEGAL PRECEDENT FOR THE RELEASE OF THE WATER.

THE IRRIGATION DISTRICT HAD ARGUED THE WATER SHOULD BE RELEASED TO REPLENISH THE SUPPLY FALLON FARMERS DID NOT USE LAST YEAR AND ALLOWED TO FLOW DOWNSTREAM TO PYRAMID LAKE.

LAWYERS FOR THE INTERIOR DEPARTMENT HAD ARGUED THAT UNUSED PORTIONS OF A WATER ALLOTMENT CANNOT BE CARRIED OVER YEAR-TO-YEAR. THEY ARGUED THE ATER SHOULD BE SAVED TO BENEFIT TWO ENDANGERED FISH SPECIES, THE CUI-UI AND LAHONTON CUTTHROAT TROUT IN PYRAMID LAKE.

HECHT AND VUCANOVICH HAD APPEALED TO HODEL NOT TO FIGHT THE RULING. IN A STATEMENT FRIDAY, THEY SAID, "WE SHOULD NOT ALLOW THE FEDERAL GOVERNMENT TO DEPRIVE THE FALLON FARMERS AND THE WETLANDS OF THE WATER THEY NEED SO DESPERATELY DURING THIS DEVASTATING DROUGHT."

UPI 08-12-88 05:14 PED

AUG 12

STAMPEDE STORAGE CREDIT

At issue is whether the water users are entitled to 21,435 acre-feet of water from Stampede Reservoir in 1988. That amount is the difference between the amount of Truckee River water diverted in 1987 under the FWS criteria (target Lahontan storage level of 215,000 acre-feet at the end of June) as opposed to the amount of water that would have been diverted under the BOR criteria (target storage level of 290,000 acre-feet at the end of June). This is because in 1987 there was only enough water from both the Truckee and Carson Rivers to fill Lahontan Reservoir to 235,435 acre-feet.

In a conference call this morning with client agencies and Solicitor's Office staff BOR Regional Director Dave Houston and Deputy Assistant Secretary for Indian Affairs Pat Ragsdale recommended that an appeal be filed. The FWS was represented by the Special Assistant to Deputy Director Steve Robinson. Steve had not advised her on his views and is on travel. Jim Hughes of CL advised us this afternoon that this morning the Secretary decided not to pursue appeal. None of the parties at the meeting this morning was aware of that decision. Justice still is awaiting word from us on whether to appeal.

The grounds for appeal are that:

--the order conflicts with the order in the Stampede case;
--the order infringes on the Secretary's authority to promulgate OCAP as confirmed by the 9th Circuit in TCID v. Secretary;
--the order is clearly erroneous in that it mistakes the plain meaning of the 1987 OCAP;
--the court is mistaken about the history and operation of the 1973 OCAP and the 1987 Interim OCAP.

The reasons why the Department took the position that there is no carryover storage credit in the 1987 Interim OCAP are set forth below. Attached are highlighted portions of the Department's decision documents.

1. Section E. of the OCAP states:

> If sufficient water is not available from the Carson River or Lahontan Reservoir to meet the maximum allowable Diversion requirements of 362,000 AF during the irrigation season, water, to the extent of the credit accumulated in 1987, will be released from Stampede Reservoir to be diverted into and through the Truckee Canal for agricultural use in the Carson Division to meet that requirement. (Emphasis added)

The underscored condition is an essential prerequisite for delivery of credit water. That condition was not met in 1987. As predicted by the BOR hydrologists, the water users received a full entitlement under the FWS target storage level of 215,000 acre-feet. The existence of a credit depended upon occurrence of the prerequisite. The prerequisite did not occur. Hence there was no credit established in 1987 and none existed to carry over into 1988. The 21,435 amount can only be taken as a planning figure in the event that the 215,000 storage objective was not met. The objective was met. The credit contingency in 1987 would operate only if water to which the users were entitled was not available under the 215,000 acre-feet storage target.

2. The 1987 credit is totally different in nature and purpose from the 1973 credit. The 1973 credit was for water to which users were entitled but the diversion of which would be foregone to minimize the risk of spills from Lahontan Reservoir and loss of water to the Pyramid Lake fishery.

--All 1973 credits were based on the concept that a credit would be established in the amount of water that could have been diverted under the criteria then in place but was not in order to minimize Truckee River diversions to the Newlands Project. The 1973 OCAP were designed to manage diversions to reduce loss of water by evaporation,spill or other drawdown of Lahontan Reservoir. In no case was the credit or any other aspect of 1973 OCAP designed to restrict water deliveries to valid water rights holders. In other words, the objective of the credit in the OCAP was not to forego full advantage of the storage capacity of Lahontan Reservoir, but to use the reservoir capacity with minimum risk of loss of water for agricultural use on the Carson River and fishery use on the Truckee River.

--With regard to the 1987 Interim OCAP, the Department and the water users disagreed about the diversion criteria. However, the OCAP had to be in effect for the water year and delays in litigation would prevent the Secretary from getting judicial approval of the criteria until the end of the irrigation season (March 15 to November 15). The new criteria were based on more current modeling of the river forecasting system. Based on the new analyses the Department was persuaded that substantially lower storage levels at Lahontan Reservoir should trigger a cut off in diversions from the Truckee River. The Department adopted as part of the 1987 OCAP a provision for adjusting Truckee River diversions through a credit that represented the difference between the amount of water that actually would be diverted under the FWS criteria and that which would be diverted if the diversions were managed by the Department under the BOR criteria that called for a target storage level of 290,000 acre-feet in Lahontan Reservoir. Clearly, if the new forecasts had been wrong and 362,000 acre-feet had not been able to be delivered to the water users in 1987, the 1987 credit would have resulted in a release of water from Stampede Reservoir for their use.

Accordingly, the 1987 "credit" contrasted with the 1973 Stampede credit in two ways. Instead of measuring the "credit" by calculating the total Truckee River diversions foregone, as had been the previous practice, the 1987 "credit" represented not diversions foregone but the difference between the amount of water diverted under the FWS criteria in place and the amount of water diverted under the former BOR criteria. In other words, the 1987 "credit" was established as a potential hedge in case the FWS operating criteria failed to produce sufficient water to fulfill water rights within the Newlands Project. There was no credit provision in the 1986 OCAP, and the analysis behind the 1987 credit shows that 1987 is dealt with as a self-contained unit -- the 1987 credit is displayed in the calculations as applicable to the 1987 irrigation season.

Secondly, the 1987 "credit" was, in effect, a bookkeeping measure that provided for the calculation of a credit but limited its use solely to the situation where the maximum allowable diversion level of 362,000 acre feet was not achieved for the Newlands Project in water year 1987. In sum, the 1987 "credit" would not take effect unless the FWS operating criteria failed to produce sufficient water within the Newlands Project system to meet the irrigation diversion requirements (maximum diversion level of 362,000 acre feet). The 1973 credit for Stampede Reservoir water was not contingent upon a showing that the maximum allowable diversion in a given year was not met.

The court's order is erroneous because it mistakenly orders the release of water for irrigation use that was not needed to meet the lawful entitlements of the Project water users. Moreover, the release of water could violate the pending court order in the Stampede case that all of the water impounded there be used for the fishery. The shortages suffered by the farmers on the Project are due to drought, not the government's management of the Project. The farmers themselves are well aware of this. On April 17, 1987, the farmers filed a brief acknowledging that no shortages were expected under either the FWS or BOR criteria. They also understood that the Stampede credit would not carry over into 1988.

> The Stampede option is written in a way that makes it unlikely that the Newlands project will even [ever?] receive the benefit of the Stampede Credit. No irrigation shortages are projected for the Carson Division of the Newlands project under either alternative B or D. See amended EAS at Table 10, p. 31. As noted, by clear implication, the Stampede Credit does not allow the credit to carry over into 1988. . . .

While one cannot blame the farmers for trying to reverse their field at this stage of the proceedings, it is nonetheless clear that they knew how the credit worked, that it was confined to the 1987 irrigation season, that the drought in 1988 was forecast early in the irrigation season by the BOR and their leadership in TCID, that TCID would deliver only a portion of their needed supplies this year because of the drought, and that the case law on the Truckee River could not justify a drawdown of Stampede Reservoir for irrigation use. Dave Houston's letter was merely a statement of the obvious.

Attachments

FORT PECK TRIBES
Assiniboine & Sioux

Honorable Daniel K. Inouye
Chairman
Senate Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Inouye:

On behalf of the Assiniboine & Sioux Tribes of the Fort Peck Reservation, I would like to bring a problem regarding the Section 8(a) program to the Committee's attention. Please include this correspondence in the record of the hearing on Indian procurement issues held before the Committee on April 14, 1989.

In 1971, West Electronics, Inc., a tribal business on our Reservation, was accepted to participate in the Small Business Administration's 8(a) program. We participated in that program until 1982, when we sought to withdraw in order to permit another tribal enterprise, A & S Industries, to participate in the program. The SBA consented to our withdrawal, and a voluntary withdrawal agreement was signed on May 20, 1982.

Since 1982, WEI has struggled to remain in business. It has obtained several contracts from the Department of Defense, and has made some inroads in the sale of its communications products. Though it has made no profit over the last several years it has remained in business, consistently striving to do better.

In 1985, with financial assistance from the Economic Development Administration, the Tribes constructed a new facility for West Electronics. More recently, as a result of a block grant from HUD, West Electronics was able to purchase new equipment for its facility. And taking advantage of the Small Business Administration 7(j) management assistance program, West Electronics has made major improvements in its fiscal, marketing and personnel systems. West Electronics is willing and able to provide quality merchandise in an efficient manner. It has, however, had a difficult time obtaining contracts.

In order to obtain the additional help it needs, WEI would like to participate in the 8(a) program once again. We understand, however, that Congress recently enacted amendments to the 8(a) program that prohibit a firm that participated in the 8(a) program, at any time, and voluntarily withdrew, for any reason,

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155

Senator Inouye
May 4, 1989
Page 2

from being readmitted into the program. It is this preclusion from further participation that we ask you to review.

We understand why Congress decided, in 1980, to limit a business's participation in the 8(a) program to a term of years -- the 8(a) program was created to assist disadvantaged businesses in getting established; it was not intended to provide a perpetual stream of contracts for such businesses. We agree that a business should not be forever dependent upon 8(a) contracts and do not oppose the establishment of a term of years to allow a firm to get on its feet. What we do oppose is the provision that prohibits a business that has participated in the 8(a) program, and then competed in the open market with only limited success, from ever participating in the 8(a) program again. This prohibition goes beyond that which is necessary to achieve Congress's goal.

We believe that Congress's goal can be achieved by permitting a tribal business that participated in, and voluntarily withdrew from, the 8(a) program to reapply after some period, perhaps five years, has passed. The business would, of course, need to meet all the requirements that any other firm must meet, and perhaps some additional requirements as well. But the firm could be eligible for assistance once more.[1] Allowing a tribal business that participates in 8(a), attempts to make it on its own but finds that it needs additional assistance, to get that assistance, fosters Congress's intent to help tribal businesses succeed. Congress could not have intended to leave tribal businesses that try to make it, and fail, out in the cold.

With respect to WEI in particular, we would point out that WEI participated in the 8(a) program when the program was less than fully adept at meeting the needs of participants. Indeed, when Congress passed the 1988 amendments to the 8(a) program, Congress specifically recognized that the program had "generally failed to meet its objectives," and that "too few concerns that

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[1] A business's participation in the 8(a) program can end in one of several ways: the firm can voluntarily withdraw, graduate, exceed the SBA's limit on participation, or be terminated for having failed to live up to a requirement of the program. We would not oppose treating businesses that are terminated for having failed to live up to the requirements of the program differently from businesses, such as WEI, who voluntarily withdrew.

Senator Inouye
May 4, 1989
Page 3

ha[d] exited the Program [were] prepared to compete successfully in the open marketplace on competitive procurements". Business Opportunity Development Reform Act of 1988, section 101(a)(2) and (3). We would urge you to permit WEI, and other businesses that participated in and voluntarily withdrew from the 8(a) program in the past, to participate in the program again. The chance for an additional period of participation could be limited to those businesses, such as WEI, that first entered the program before the fixed program participation terms (FPPT's) were established.

We realize that another amendment to the Small Business Act will be needed if WEI is to re-enter the Section 8(a) program. We would appreciate the Committee's support for our efforts to obtain such an amendment.

Thank you very much for your assistance in this important matter.

Sincerely,

Raymond White Tail Feather

Raymond White Tail Feather
Tribal Chairman